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Vol. V

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible] 1914

No. [illegible]358

MINNESOTA STATE LIBRARY

MARTIN LAWLOR ET AL., PLAINTIFFS IN ERROR,

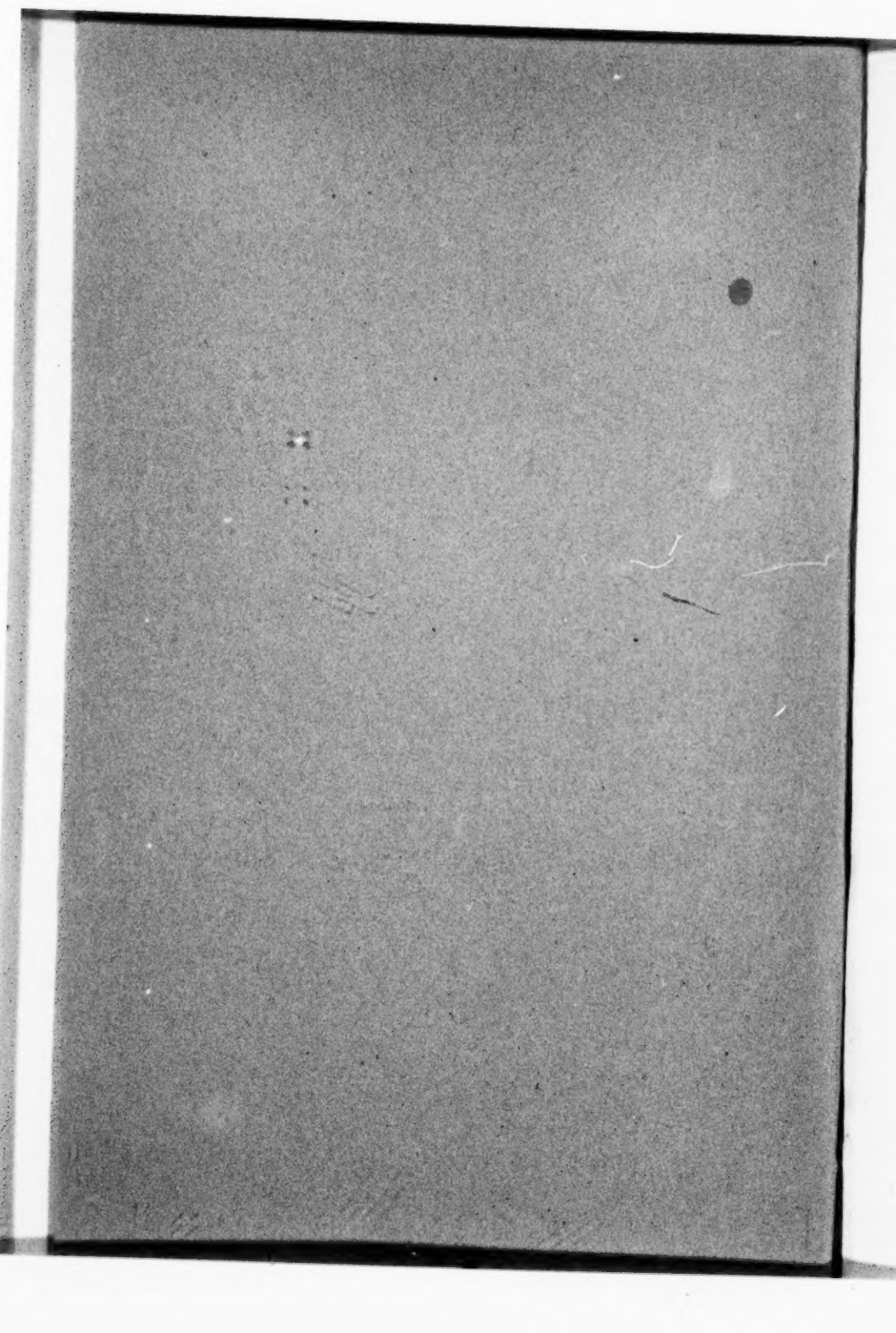
vs.

DIETRICH E. LOEWE AND MARTIN FUCHS, PARTNERS UNDER THE FIRM NAME OF D. E. LOEWE & CO.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

FILED FEBRUARY 10, 1914.

(24,051)



IN THE

United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT.

No. .....

MARTIN LAWLOR ET AL.,

Plaintiffs in Error,
(Defendants Below.)

vs.

D. E. LOEWE ET AL.,

Defendants in Error.
(Plaintiffs Below.)

TRANSCRIPT OF RECORD.

Error to the District Court of the United States for the District of Connecticut.

VOL. V—Pages 1441 to 1919.

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THE TOLEDO BRIEF & RECORD COMPANY,
PRINTERS.

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plaint it is alleged that the hatters association entered into a conspiracy to injure the complainant's business?" A. I didn't read that part down as far as that. I wanted to find out—to get the names of the Danbury people it refers to; then I stopped. 5761

Q. Then, as I understand it, you wish to testify that after you read this remarkable item here that there was a suit brought for $250,000 against an organization of which you were a member you read the first paragraph with all these names and you never read any farther to find out what the object was? A. If I had read the paper —I don't believe everything that is in print in reference to a labor organization because they get this information from anybody no matter whether they are fair or foul men and put it in the paper to make reading, and as a matter of fact when I look at these things I look at the bottom to see if it is signed officially, if it isn't I won't read it. This paper business is a nuisance in my business. 5762

Q. Now your examination is going to be rather long, Mr. Farrell, anyway, and I would advise you to confine yourself to answers.

Witness:

The question about reading an article in the paper I can't answer by yes or no. He asked if I read it and I explained it. 5763

Q. Now I will ask if you mean to rest your testimony on this point that you read there that your organization was sued for $250,000. You read just the first paragraph in regard to the parties and you never read any further to ascertain what the object of the suit was? A. I knew it was for some trumped up cause or something and paid no more attention; because certainly organizations—

The Court: 5764

Mr. Witness, he didn't ask you for your reasons. He asked for a fact. You observe the question and answer it.

A. I will answer the question. I read part of the item to find out what men was in Danbury. I saw some was in Danbury—

Q. (Interrupting) When you got down to the clause in regard to boycotting you stopped, isn't that it?

5765 Mr. Davenport:

Conspiracy is what staggered him.

Mr. Mulholland:

Mr. Davenport, will you let the witness answer?

Mr. Davenport:

He says he read down to conspiracy.

Q. You are friendly with some of these defendants? A. Friendly with everybody. Friendly with Mr. Loewe.

Q. You are a personal friend of Mr. Loewe? A. Have been since—

5766 Q. Didn't you as a member of the Common Council, vote against an appropriation to the Danbury Hospital because Mr. Loewe was President of it? A. No, sir, I didn't, I opposed it because—

Q. Didn't you oppose it? A. I opposed it on two grounds. Will you let me state the grounds?

Q. Answer the question? A. Will you let me state the grounds?

Q. Are you personally friendly to Hugh C. Shalvoy? A. I am—that is what do you mean by personally?

5767 Q. Well, you knew him personally and often met him, in 1902? A. I often meet him on the street.

Q. Have you talked with him occasionally? A. No, sir.

Q. Never stopped and talked? A. Never stopped and talked to him on the street.

Q. Ever been to his house and talked with him? A. Never go inside his house.

Q. Never talk to him at all? A. In his office when I would go there to look for registered apprentices if I saw him I would talk to him.

5768 Q. How about Martin Gorman; did you know him well in 1902? A. Yes.

Q. Talked with him often? A. Well, not often.

Q. Occasionally? A. When I met him would say how do you do.

Q. Ever been to his house? A. Never.

Q. Has he ever been to your house? A. Never in my life.

Q. Discuss trade matters with him? A. Never, I had something else to do.

Q. How about Patrick Connolley? A. I was ac- 5769
quainted with him.

Q. Did he discuss trade matters with you at that time? A. No, never mentioned trade matters.

Q. Have you ever been to his house? A. I went to a dance at his house one night.

Q. How about Mr. Maher, did you know him in 1902? A. Yes.

Q. Knew him well? A. Well the same as any other acquaintance, Mr. Maher as anyone in the city to speak to.

Q. Did you ever discuss trade matters with Mr. 5770
Maher? A. Not to my knowledge, never.

Q. How about Mr. Lawlor, did you know him? A. I know Mr. Lawlor.

Q. You knew him well? A. Not any different from the others.

Q. Did you ever discuss trade matters with Mr. Lawlor? A. Never discussed it with him.

Q. Did you know Mr. Moffitt? A. Well, I knew him when I saw him.

Q. Ever meet Mr. Moffitt? A. Never, only I saw 5771
him on the street and they said that was Mr. Moffitt.

Q. You never spoke to him at all? A. Never spoke to him,—said how do you do. I saw him in the hotel and they said that is Mr. Moffitt, and that's as far as I knew him.

Q. How about William P. Bailey? A. I don't know unless I saw the man going by and they said that was Bailey. I never met the man in my life. Never knew the man.

Q. Now I want to ask you whether in reference to this Roelofs suit you are willing to testify that you never 5772
knew anything about the objects of the suit, or the reasons for bringing it? A. I never knew the cause of the bringing the suit against Roelofs.

Q. And you never knew any of the matters that were alleged against your organization in that suit? A. No, never until lately; until this last trial, where I learned my information of that.

Q. I mean in 1902? A. 1902 and '03 I knew nothing about it.

5773 Q. Let's look at these other defendants in this suit. Charles H. Barrett, do you know him? A. Barrett?

Q. Yes? A. Yes, he held some office in the organization, I don't know what it was.

Q. You knew him—know him to speak to him? A. Well, when I meet him on the street I speak to him, as far as that.

Q. Didn't you ever discuss with anyone this Roelofs suit? A. I didn't; never mentioned it to anybody; didn't pay enough attention to it because I didn't consider it to pay any attention to it.

5774 Q. Were you working at the trade? A. I was.

Q. In a union factory? A. Yes, sir.

Q. And in a room with lots of other union men? A. I was foreman in the room and the men was working.

Q. You never discussed this matter on any occasion with any of these men? A. Never discussed the subject with the men.

Q. Now, as I understand it, you stated that you knew that your organization had agents on the road, advertising the label in the places where Mr. Loewe sold his goods; you are willing to stand on that statement, are

5775 you? A. If the statement is made in the Pacific Coast—I understood they had agents in the Pacific Coast.

Q. And you knew that these agents were on the Pacific Coast advertising the label in the places where Mr. Loewe sold his goods, is that right? A. That is what I understand they was there.

Q. Now where did you get that information? A. The only information I got was from the current talk. Somebody somewhere, I wouldn't swear how I got it. I couldn't, but some way I got it in my mind that it was talk that there was agents at San Francisco, and on

5776 the Pacific Coast.

Q. Current talk? A. That was current talk.

Q. There was general knowledge on that topic apparently among the hatters in Danbury? A. That was the understanding that I got; I don't know as to anyone else.

Q. And that was to the effect that these agents were there particularly in connection with the sale of Loewe's hats? A. Well, the union label; I don't know for the sale of hats.

Q. You didn't actually think yourself that they were advertising the label with the labor organizations on the Coast? A. Yes, sir; they picked out the Coast there because Loewe's goods were being sold there. 5777

Q. Well, they had an agent on the Coast at that time? A. I don't know; I wouldn't say he went directly there.

Q. But the reason they picked out the Pacific Coast was because Loewe was selling goods there? A. It wasn't alone on the Pacific Coast but it was all over that they have their agents, as I understand. That is the knowledge I got. 5778

Q. But the reason they picked out the Pacific Coast was because Loewe had agents there? A. I didn't say they picked out the Pacific Coast. I say I understood they had an agent. I won't say all agents, because it would be swearing wrongly; they had an agent on the Pacific Coast advertising the label to get people to buy those labeled hats; placed in the union label hats.

Q. In places where Loewe's goods were sold? A. No, placed in union hats. The hats sold on the Pacific Coast, and that wouldn't be Loewe's.

Q. Do you want to testify that they had agents on the road particularly where Loewe sold his hats? A. No, I don't think I knew they had agents particularly where Loewe sold his hats. 5779

Q. You testified that it was understood in Danbury that that was done; you didn't mean to so testify? A. I meant to testify that from that general understanding that Mr. Loewe's goods were sold on the Pacific Coast that at that time there was one agent, I don't know, there may have been two. I never looked up the matter to find out whether there was more than one on the Pacific Coast and he was advertising the union label at the time to offset the sale of Loewe's hats to get people to obtain label hats on those goods; label hats, and that is as far as I got. 5780

Q. He was out there advertising the union label to get customers to take union labeled hats instead of Loewe's hats? A. That is the way I understood it.

Q. And you got that from common talk in Danbury? A. General talk that agents was through the country.

Q. Well, you got that from common talk in Danbury? A. Yes.

5781 Q. What agents did you know? A. I knew one named Kelly.

Q. Daniel P. Kelly, defendant in this suit? A. Yes.

Q. Where is Kelly? A. I don't know; he is out West in some city, or out west somewhere now; I don't know where he is located; somewhere.

Q. How long have you known Kelly? A. I knew him when he was a boy. He lived across the road from the shop. His mother ran a boarding house there.

Q. Did you see him during the time he was agent? A. I never did—I did see him once.

5782 Q. Where was that? A. Out of the window of the shop; going in his house.

Q. Did you ever talk to him during the time he was agent? A. Not the time he was agent.

Q. How did you know he was agent? A. Because when the men were talking in the shop they said he got an appointment to go on the road for the hatters.

Q. What shop was he working in then? A. I don't know what shop he worked in.

Q. You knew he left his shop to go on the road? A. I knew he left the city to go to be agent. He might

5783 have been working at that time. He might have been on the road.

Q. When was that? A. I couldn't tell.

Q. Have you any idea? A. I haven't got the least idea.

Q. Several years prior to the commencement of this suit? A. I wouldn't swear. My memory is very bad in regard to anything back as far as that; I wouldn't say whether it was three years before or whether it was a year.

Q. You never talked with Kelly during the time

5784 he was agent? A. No, not to my knowledge.

Q. Not to your knowledge? You would know of it. You mean not to your recollection? A. That is right. To my recollection.

Q. Were you a regular reader of the Danbury News? A. Yes, sir. Well, I will state a partial reader. You asked me if I read these articles and I answered partially.

Q. You heard some of those articles read? A. I heard you read a good many I never read myself.

Q. You heard me read some that you have read? A. 5785
You read the entire article. I only read the headlines.

Q. Have you heard me read some article that you have read? A. That I have read?

Q. Yes? A. The Roelofs article you have read I have read part of it.

Q. How long have you been a reader of the News? A. Since I learned to read. I have got a partial education so I can read the paper.

Q. Well, how long have you been educated? A. I don't think it is over ten years to my knowledge. I am not educated at the present time. I will admit that. 5786

Q. That would be 1902; didn't you know how to read prior to 1902? A. Oh, yes, partially. I don't know how to read English at the present day nor even to speak it.

Q. What do you mean by that? A. Because I never studied a word of grammar in my life; therefore I can't speak the English Language.

Q. Do you want the jury to understand that you can't take an article and read it and understand it? A. Yes, I can. I went to night school in the summer of 1884 or '5 along there. 5787

Q. When did you become an elector? A. When I became twenty-one.

Q. You had to read the Constitution of the United States? A. I did, I read three lines; as far as they would let me read.

Q. Well, as I understand it, while you disclaim reading anything in the News, naturally you are a regular reader of the News we will say from 1900 down to date? A. I was a regular taker of it.

Q. And you were what we call a regular reader? A. 5788
Not a regular reader. I read some things, just the headlines.

Q. You were a regular reader except when you didn't read it? A. I was a partial regular reader.

Q. You usually read it, didn't you? A. Not the entire paper.

Q. But you usually read part? A. What I wanted to look at. How much I wanted to find out. If you will let me state the amount I read; I said I am not a regular reader of the paper, but I read the headlines.

5789 Q. I want to ask if you read this article in the Danbury News "Advertising the hat label. The United Hatters have spent thirty thousand dollars in two years for that purpose"? A. No, I never read it. My first attention was called to it when you read it.

Q. Did you read Mr. Moffitt's report as it appeared in the Danbury News? A. No, sir.

Q. Did you read either of these articles in the Danbury News as to the unionizing of the Loewe Factory; where they said the men had quit work? A. I read the item in regard to the Loewe factory—the men came out.

5790 When I got home I read that paper, and I didn't know what it was. I couldn't call it to mind now.

Q. You didn't know what was in that article. You knew at the time and it called it to your attention at that time? A. It did.

Q. Well, now let me see. Did you read this: "After Loewe Factory. The Hatters' Union will attempt to unionize this plant." Then going on to say that Treasurer Maher went to the factory and John Moffitt, President, and ordered all the union men there to quit work? Did you read that? A. Well, if it is in there, I must have

5791 read it.

Q. Well, did you read the one in the following day?

Q. Did you read the one on the following day: "The Loewe Matter. The United Hatters induced non-union men to leave the plant." That is just a headline? A. I read that. I knew it wasn't so.

Q. How did you know it wasn't so? A. Because I take no truth in what the paper says. I take no truth in what the paper tells in regard to local conditions, for they get information wherever they can get it. I can

5792 turn around and give the paper information and they would print it.

Q. Do you want to go on record that you read that or that you now identify it because it was not true? A. Oh, I wouldn't say it was so or wasn't so.

Q. But do you say you now identify it? A. Which?

Q. Just now you said that it wasn't true. On what do you base that statement?

Q. You talked to the men working with you in the factory in regard to this Loewe matter? A. I didn't.

Q. After you read this in the Danbury News? A. 5793
I didn't.

Q. You had no discussion with any one concerning it? A. I didn't so far as my knowledge goes.

Q. You haven't discussed this matter with anyone? A. I didn't.

Q. Did you receive one of these warnings "Plaintiff's Exhibit 86"? A. I did.

Q. Did you discuss that with anyone else? A. I didn't because I took it as a bluff.

Q. Well, now, did you read that in the Danbury 5794
News, that warning? A. I didn't.

Q. And you never heard anyone else mention the fact that they had received such warning? A. I never heard anyone say they received one, because, as far as I know I am stating that at the present time. I tell you my recollection is very dim, and I would like to correct one thing in regard to that reading. I believe I read the headline the Loewe shop was an independent shop and they only call fair men out of the shop. They couldn't call foul men out because—

Q. After this suit was started did you continue a 5795
member? A. I did.

Q. Paying dues? A. Yes, sir.

Q. You made no protest to the officers? A. No, sir.

Q. Made no effort to prevent the re-election of the same officers? A. No, sir.

Q. Were your expenses paid to come here and testify in the former trial? A. My day's wages was paid and car fare.

Q. Oh, your expenses and your day's wages were both paid? A. Giving so much for car fare or expense of coming here.

Q. That included day's wages? 579

The Court:

Is there any dispute about that?

Mr. Mulholland:

If the Court please, I believe that there is no dispute, but that each witness had his expenses paid.

Mr. Merritt:

And their day's wages.

Mr. Beach:

We will find out about that.

5797 Mr. Mulholland:

And admit it on the record.

Q. Then I needn't ask any further about that. Did you receive this letter in regard to employment of counsel? A. Yes, sir.

Q. Did you sign it and mail it back to Mr. Connolley? A. I did.

Q. You have taken no other steps in connection with defending that action? A. I thought some of hiring a lawyer myself to defend me, but I got the letter.

5798 Q. After you received that letter you took no other steps to employ counsel to defend yourself? A. No, I didn't.

Recess.

Afternoon Session.
Wednesday, September 25th, 1912.

EDWARD D. LEES.

Sworn by the Clerk:

EXAMINED

By Mr. Mulholland:

5799 Q. Where do you live, Mr. Lees? A. Danbury, 18 Cleveland Street.

Q. How long have you lived in Danbury? A. Thirty years.

Q. You are a defendant in this case? A. Yes, sir.

Q. I wish you would tell the jury how old you are? A. 76 the 13th of this month.

Q. 76? A. Yes, the 13th of this month.

Q. You belong to the Hatters organization? A. Yes, sir, for 35 years.

Q. Which branch of the trade, as to whether the making or the finishing? A. Finisher.

5800 Q. When you did you first become interested in making hats, that is, to work at the trade? A. In England.

Q. How long ago? A. 35 years ago when I left England.

Q. Did you make hats in England also? A. Yes, sir.

Q. For how long? A. Oh, for quite a number of years I couldn't tell you exactly how long.

Q. But since you came to this country you have been making hats? A. Yes, sir, ever since I came to this town up to the last 10 or 11 years.

Q. Who were you working for in 1902 and '03, if you know? A. Let's see, 1902, the last man that I worked for was Millard. 5801

Q. Are you working at the trade now? A. No.

Q. How long since you have worked at the trade? A. Well, since I have worked in the trade it will be about 7 years since I worked at the trade at all. I did very little the last 14 years, only just a little I was getting too old, I didn't want to work.

Q. Since you were 50 years old, that is, during the last 26 years have you attended meetings of the hatters organization? A. No, sir, not for the last 15 or 16 years I have never been near the meetings. 5802

Q. For 15 or 16 years you say you have not been near the meetings? A. No, sir, I am an honorary member, I don't need to go, I am exempt from all dues.

Q. That is, since you were 50 years old? A. Yes, sir.

Q. Or it may be 60, which it is, 50 or 60 in your organization? A. 60 I think.

Q. Now let us see, do you remember some trouble occurring in Mr. Loewe's factory in Danbury in 1902, or hearing of it? A. I remember of it, of them talking about it in the street, but I was not working in the shop all I heard was hearsay talk in the street about it. 5803

Q. Did you hear of the men coming out on strike? A. No, I don't think I did, I am almost sure I did not, I wasn't interested in it very much.

Q. Now, take your time, don't get excited, just answer the questions, you are all right up there. How long was it after the strike occurred that you first heard of it? A. Well, I couldn't say.

Q. Two or three days, or a day, or the same day? A. I couldn't tell you exactly how long, it might have been two or three weeks, or two or three days, I couldn't be sure. I have heard of it on the street, people talking about it on the street. 5804

Q. Now before that time, that is, before you heard that the men had come out of the Loewe factory, had you ever heard that the officers or agents of the United Hatters were boycotting people in other states? A. No, sir, I didn't know what they was doing, I never heard anything of the kind.

Q. Well, after the strike occurred in Mr. Loewe's plant, and up until the time the papers were served on you in this

5805 case, did you know anything about the officers or agents, of your organization, boycotting Mr. Loewe? A. No, sir.

Q. Did you ever hear anything about it? A. Only hearsay, what I heard talked on the street.

Q. What I mean is, did you ever hear that these agents and officers were boycotting anybody? A. No, sir. I did not.

Q. What has been the condition of your eyesight during the last 15 or 16 years? A. Well, it ain't very good now, I couldn't see now to finish a hat without glasses.

5806 Q. I mean back in 1902 and '03, to what extent did you read? That is the time of the Loewe trouble. A. I could read a little with the naked eye.

Q. Did you ever read a publication known as the Federationist? A. No, sir.

Q. Did you ever see it? A. No, I don't believe I ever did, not to my recollection.

Q. Can you tell the jury who publishes it? A. What?

Q. The Federationist? A. Yes.

Q. Who publishes it if you know? A. No, I don't know, I couldn't tell you that who publishes that. I don't know anything about it.

5807 Q. Do you know whether or not you belong to the American Federation or Labor? A. No, sir, I do not.

Q. Do you know that the organization of which you are a member became affiliated with the American Federation of Labor? A. I don't know whether they were affiliated with it or not. It has been reported so, but not to my knowledge it wasn't.

Q. Now, Mr. Less, did you ever read the Journal of the United Hatters, that is a publication that your organization prints? A. No, I did not, and I never took any interest in it for a long time.

5808 Q. You know that you are charged here with being a conspirator or in a conspiracy to interfere with Mr. Loewe's trade? A. I never heard of it.

Q. Have you ever knowingly been a party to a conspiracy to boycott Mr. Loewe's goods? A. No, sir, I never did, never have been to any meeting for a long time, never held any offices in the Hatters Union at all. I never had any office.

Q. Were you ever any delegate to any convention? A. Never, never sir.

Q. Is your property attached in this case? A. Yes, 5809
sir.

Q. Did you ever hear of a firm by the name of Berg? A. I have heard speak of the firm, that is about all I knew about it. Heard the Hatters speak of it that's all I know.

Q. Do you know where their place of business is? A. No.

Q. Did you ever hear of a firm named Roeloff & Co.? A. Yes, I have heard speak of that.

Q. Do you know where their place of business is? A. No, sir. I have never been out of Danbury since I came there. Never been away from Danbury since I came here. 5810

Q. You mean to work or to go out of town? A. Never been out to work, that is what I mean.

Q. Never been out of there to work? A. No.

Q. Did you ever hear that the hatters were boycotting Berg or Roeloff & Co.? A. No, sir, I never did.

Mr. Mulholland:

You may take the witness, Mr. Merritt.

CROSS EXAMINATION

By Mr. Merritt:

Q. Did you ever read the by laws of your organization? 5811
A. Why, I used to read them, but I have never taken any notice of them lately. I read them when I was tending to work in Danbury, I used to read the by laws, often. I wasn't very well posted on them, but still if anything was wrong with them I would get them and look at them—

Q. Just answer the question yes or no, if you can make your answers as short as possible. A. Have I ever read the by laws?

Q. Yes. Make your answers as short as possible. A. I will endeavor to do so. Now then ask the question again.

Q. What I want to get is have you ever read the by 5812
laws since 1900, or your constitution since 1900? A. I guess I have.

Q. Didn't you see in that that your organization was a member of the American Federation of Labor? A. I might have seen it, no doubt. I was reading for something simply to know what happened in the shop, I go through the by laws and look it up.

Q. Well, it appears in your constitution or by laws the way in which delegates to the American Federation of Labor are elected and I was wondering if you had ever read that?

5813 A. No, I don't remember that, I couldn't tell you anything about that, I don't remember reading it.

Q. But you may have known that your organization was a member of the American Federation of Labor? A. I don't know now whether it is a member of it or not. I don't think they are a member of it.

Q. You have never read a copy of the journal of the United Hatters? A. No, I don't remember of ever reading one, I don't remember. I took very little interest in it for a number of years.

Q. You know what it is, don't you? A. I guess I
5814 know the meaning of it.

Q. You know what it is, it is a magazine issued by your organization? A. Yes.

Q. Have you ever seen a copy of it? A. Sir?

Q. Have you ever seen a copy of the journal? A. No.

Q. Were you working in Danbury in 1902 and '03? A. I have worked in Danbury for 30 years, never worked out of it.

Q. You have been working at your trade until 1907? A. I was working in Millards when the injunction was put on my house.

5815 Q. Yes, but you have been working at the trade up to about 5 years ago I understood you to say? A. About 7 years ago.

Q. Oh, 7 years ago? A. Yes, only a little.

Q. You never remember seeing a copy of the journal of the United Hatters? A. No, sir.

Q. Don't you recall that they were placed in the factory where you were at work? A. No, sir, I don't.

Q. Don't you recall ever seeing them around on the benches where you were at work? A. Well, I don't remember of them doing so, only what I heard on the streets, people
5816 talking on the streets.

Q. Now, I will ask you about this, haven't you ever seen copies of the convention proceedings of the United Hatters? A. No, I have never taken any interest in them at all, never bothered about them. My mind is on my own work.

Q. What's that? A. It takes all my time to think of my own, and not the convention. I have only got me and the old lady to look after.

Q. Did you read the Danbury News in 1902 and 1903? A. Yes, I read the Danbury News now pretty often.

Q. And didn't you read in the News any matters relating to the hatters organization? A. Yes, I guess I read some of those very often of late. I look continually for it. **5817**

Q. You do? A. Of late, yes.

Q. Did you read matters of that kind in 1902 and 1903, and even prior to that? A. I don't remember reading anything about it, I might have read it at that time, but I don't remember it. My memory is very short now.

Q. You remember reading about the Roeloff suit? A. No, I don't remember reading about that. Still I have heard talk about it, I don't remember reading about it.

Q. You understood, didn't you, that the Roeloff Co. brought suit against the Hatters organization? A. No, I never heard that. **5818**

Q. What did you hear? A. What?

Q. You said you heard about the Roeloff suit, I think? A. Yes.

Q. What did you hear? A. I heard that they were going to bring suit against them, but it dropped there. I never heard any more about it afterwards.

Q. You understood suit was to be brought against your organization, did you? A. Well, in my mind I thought so, in my own mind.

Q. And did you know the suit was to be brought on account of the strike and the boycott? A. Yes. The way I heard it, it was going to be brought. **5819**

Q. On those grounds? A. On that account, yes, sir.

Q. Did you read in the Danbury News in 1902 that the men had been called out of the Loewe factory? A. No, sir, I didn't read it in the news, I heard it on the streets all the same, but I don't remember reading it in the News, I heard men talking about it.

Q. You knew the men had been called out for the purpose of unionizing the factory, I mean you heard that? A. I heard that on the street amongst the men, the Loewe men. **5820**

Q. Did you hear Mr. Farrell testify? A. Yes, sir, but I couldn't hear what he said, I was too far away.

Q. I wanted to ask you if you didn't hear that the agents of the United Hatters were out on the Pacific coast? A. No, sir.

Q. You didn't hear that? A. No, sir.

Q. Did you understand that the agents of the United Hatters were out advertising the label? A. Yes, I supposed they were out advertising the label. I understand that, yes.

5821 Q. Didn't you understand they were out advertising it particularly where Mr. Loewe sold his goods? A. I never heard anything particular about it. I knew that the agents was out, that is all I knew about it, what they were doing or where they went, I didn't know.

Q. And any information which you have concerning this matter you got from talking with other members of the trade? A. Just hearsay on the street.

Q. Don't you recall reading Mr. John Moffitt's report as it was printed in the Danbury News? A. No, sir, I don't recall it.

5822 Q. Do you think you would recall it if you saw it? A. Sir?

Q. Do you think you might recall it if you saw it? A. I don't think so.

Q. Well, I won't bother to read it. Do you remember reading an article in the Danbury News to the effect that they were spending large sums of money advertising the label? A. No, I don't remember reading that, but I know they were spending money advertising the label, through talking with the men in the streets. If I met them in a saloon once in a while they would talk about it.

5823 Q. Do you know any of the officers of the Union personally? A. No, sir, I did not. I knew them by name, and I knew one of them by sight, but I never had but very little acquaintance with them. I never had anything to do with them for a long time.

Q. I am talking about 1902 and '03? A. Yes, I knew the officers then, and I knew them personally, but not to talk with them or to have any conversation with them. I was an outsider.

Q. Then as I understand your testimony, you cannot recall whether you ever read in the Danbury News any of

5824 these matters relating to the Berg and Roeloff people? A. No, sir, I don't remember anything about it.

Q. But you did hear by talking with your fellow workmen that a suit was to be brought by the Roeloff firm? A. Yes, sir.

Q. And you understood it involved boycotting? A. I didn't konw anything about boycotting. I understood they were going to have trouble with Roeloff.

Q. I thought you said you understood a suit was to be brought, and you inferred that it was because of the boycott, etc.? A. I don't think so.

Q. What? A. I dont' think so. 5825

Q. You didn't understand that? A. No, sir.

Q. What was your understanding in regard to the suit? A. Well, I thought if they had boycotted him, I thought there was being a suit brought if they had boycotted his goods, that is what I thought about it.

Q. You understood there was a suit to be brought? A. No, no, I didn't understand there was a suit to be brought, I didn't understand anything about it, I didn't know anything about that.

Q. Didn't you hear anything about a suit by Roeloffs? A. Only what I heard on the street. 5826

Q. I mean what you heard on the street? Didn't you hear of a suit by Roeloffs against your organization? A. No, I did not.

Q. Never heard anything in reference to a suit brought against any of the officers of your organization by Roeloff? A. No, sir, I did not.

Q. And you don't recall whether or not you ever read anything of this kind in the paper? A. I don't remember of reading anything about it.

Q. Now, as I understand your testimony, the most you can testify to is that you don't remember whether you read any of these things or not, is that correct? A. I tell you distinctly I don't remember them, I couldn't remember things that happened two years ago, never mind going back so far as that. 5827

Q. Now you continued a member after the suit was brought, didn't you? A. Yes, sir. Sir?

Q. You continued a member after suit was brought? A. Yes, sir.

Q. You continued paying dues? A. No, sir, I ain't paid any dues I am exempt from them.

Q. You have to pay national dues, don't you? A. National assessments only. 5828

Q. Assessments then? A. Only national assessments.

Q. You continued paying national assessments? A. That is all. That don't amount to much.

Q. Well, what did it amount to, do you remember? A. I guess I only paid about half a dollar the last 12 months.

Q. I don't mean now, it was a percentage on your earnings, wasn't it? A. Yes.

Q. You pay that even now after the suit was brought? A. Yes, sir, after leaving Millards.

5829 Q. As long as you continued at the bench you paid that? A. Yes.

Q. You have to pay that according to the rules? A. Yes, sir.

Q. You made no protest to any one concerning any of the matters brought in this suit? A. No, sir.

Q. You made no effort to prevent the re-election of the same officers? A. No, sir, I never bothered about any meetings.

Q. Did you get one of these letters concerning the employment of counsel? A. Sir?

5830 Q. Did you get a letter from the Union in 1903 concerning the employment of counsel in this case? A. No, I don't think I ever did. I have heard them talking about it today, but I don't remember ever getting one. I have heard them speak about it here today, that is all I remember about it. I don't remember ever getting one.

Q. I take it you did nothing about the employment of counsel? A. No, sir, not a bit.

Q. Nothing of the kind? A. I never did nothing, never took any steps whatever.

Q. Did you receive that warning plaintiff's Exhibit 86?

5831 A. No, sir, I have never seen that. That is the first time I have ever seen that.

Q. Now I have the Danbury Directory for 1902, plaintiff's Exhibit 112 for identification; your name appears there as Edward D. Lees, 18 Cleveland Street? A. Yes, sir. That is right.

Q. Was that right in 1902? A. Yes, sir.

FREDERICK S. BLACKBURN,

Sworn by the Clerk:

EXAMINED

5832 By Mr. Beach:

Q. Your residence? A. 72 Elm Street, Danbury, Conn.

Q. How long have you lived there? A. I don't know. I should suppose about 10 years.

Q. Are you a member of the Hatters Union? A. Yes, sir.

Q. Which? A. The Finishers.

Q. For how many years? A. Since I served my time, since about 1868.

Q. Your age now? A. 62 years. 5833

Q. A family man with children? A. Yes, sir.

Q. And lived in Danbury all your life? A. No, the vast majority of it.

Q. Served the city there in any capacity? A. Yes, sir.

Q. As what? A. As alderman, at the present time one of the City assessors.

Q. Were you ever a delegate to any convention of the American Federation of Labor or of the United Hatters? A. No, sir.

Q. Ever held a local office prior to 1903 in your local union? A. No, sir. Never held an office in the union. 5834

Q. Or any in the national union? A. No, sir.

Q. Prior to 1903, or prior to Oct. 1st, 1903, were you not a regular reader of the Journal of the United Hatters? A. I have seen it lying on the bench. I may have picked it up and looked at it and put it back again, that's all.

Q. Do you remember reading in that journal anything connected with the Berg & Co.? A. No, sir.

Q. Do you recollect reading in that journal anything about Roeloff or H. H. Roeloff & Co.? A. No, sir.

Q. Ever read the American Federationist? A. I never see one that I am aware of. 5835

Q. When did you first learn of any trouble in Mr. Loewe's factory? A. Why, I was walking up River St. one day, and really I saw a bunch of men coming away from Mr. Loewe's factory, at least, I imagined so. I said, "Why Mr. Loewe must be in trouble," that is the first I remember of it. In fact, I had just returned to town.

Q. Up to that time did you know anything about any trouble in Loewe's? A. No, sir, not a thing.

Q. Prior to the institution of service in this case, on you of papers, did you not know that the officers and agents of the union were pursuing Mr. Loewe's goods in different states? A. No, sir. 5836

Q. Did you, prior to the beginning of this suit, know that the officers and agents of the union did pursue the goods of Messrs. Berg & Co. in this state? A. No, sir.

Q. Or the goods of Messrs. H. H. Roeloff & Co.? A. No, sir, I was not aware of anything of the kind.

5837

CROSS EXAMINATION

By Mr. Merritt:

Q. Didn't you know that in 1903 the agents of the United Hatters were on the Pacific coast? A. Not particularly on the Pacific coast, I supposed they sent the agents, sent the agents anywhere they were placing them, I didn't know where they might have been.

Q. Did you know the agents were particularly in places where Mr. Loewe was selling goods? A. No, sir.

Q. Never heard of such a thing? A. No, sir.

5838 Q. Now you stated that you just returned to town when you saw the men leaving Mr. Loewe's factory? A. I had been out of town for several months.

Q. But generally speaking you have lived in Danbury during all this period? A. Yes, sir.

Q. Did you attend any meetings of your local unions in the years 1900, 1901, 1902 or 1903? A. I can't that is too far back.

Q. You mean you can't recall? A. No, sir.

Q. Mr. Blackburn, if you cannot recall whether or not you attended any meetings during those years, you can't very

5839 well recall, can you, as to whether any of these boycotting activities were ever called to your attention by conversation with people or through the daily press? A. I never heard of any boycotting activities.

Q. You are willing to swear to that positively? A. Well that is my answer, I never heard of it. You can swear to it just as you please. I am telling the truth.

Q. And you say you can't testify here as to whether or not you ever went to any meetings in 1900, 1901, 1902 and 1903, because you don't remember, and yet you are willing to testify that in those years you never heard anything about

5840 these matters; now how can you have memory in regard to that one matter which is your own personal act of that kind, and yet have absolute memory that you never could have heard of these things in any of those years? A. There is one thing, I don't believe in boycotting myself, and that perhaps is a reason that I never heard of it, if there ever was such.

Q. You are a regular reader of the Danbury News? A. Pretty good.

Q. And you read it during these various years? A. I suppose so, yes, sir. I have to stop and think a great deal. He is driving me back ten years and I can't remember. 5841

Mr. Beach:

Just answer the question, that is all.

Q. What I am trying to show is the improbability of your living in Danbury and your never having had these matters brought to your attention; I don't question the good faith of your statement, but how you can testify positively that these things did not happen, I don't understand? A. I said they didn't come to me, I didn't know anything about it.

Q. Yes, and you testified positively for ten years back that these things never came to your attention in any way whatsoever? A. Pardon me, but he has got me guessing, and when he puts me back ten years I will have to stop and think. 5842

Q. I don't want to confuse you at all, but what I am trying to get is this, it is the distinction between your testifying absolutely that you never did hear of these matters and your testifying that, as far as you recall now, you did not hear of these matters.

Mr. Mulholland:

Is that a question?

Q. And I want to know what your position is here, whether in the face of all this evidence here in the Danbury News, in the Local meetings in the journal and everything of that kind you are willing to testify that it never came to your attention in any way or whether you are only willing to testify that to the best of your recollection now you cannot remember? A. I never heard of a boycott, is that what you mean? 5843

Q. Then you are willing to testify positively here that, going back over a period we will say of 1898, that you never heard in any way of the boycott, or are you simply testifying that you don't remember ever having heard of it? A. Well, as I said before, I don't remember, it never came to my attention. 5844

Q. It never came to your attention? A. No, sir.

Q. Well, when did it first come to your attention that you had agents on the road? A. Well, I couldn't really tell you, I couldn't quote dates on that.

Q. Didn't you hear of the Berg trouble? A. I did hear something about it.

Q. At the time when it took place? A. I guess it was after I worked there.

5845 Q. After you worked at Berg's? A. Yes, sir.

Q. Did you work there before or after the trouble? A. Which trouble, the Loewe trouble?

Q. The Berg trouble I am talking about? A. Why, after the Berg trouble.

Q. You worked there after the Berg trouble? A. Yes, sir, but that was before the Loewe trouble, yes before the Loewe trouble.

Q. During what period was it as near as you can place it? A. Why, I could make a statement that perhaps would clear it and perhaps give it to you.

5846 Q. You may make the statement? A. Why, I was in Bergs shop working there, and I went to Danbury, back to Danbury to work, and just as I had got back to Danbury why Mr. Loewe's trouble was on, and I don't know as I knew anything about Berg's trouble until I had worked there.

Q. Until you had worked there? A. Yes, until I had worked there.

Q. You heard of the Roeloff trouble didn't you? A. I did down there.

Q. And you heard that the organization had been sued? A. Why possibly.

5847 Q. You don't recall whether you did or not? A. It is possible.

Q. But you don't recall? A. Of the Roeloff trouble? Yes, I knew there was trouble in Roeloffs.

Q. How about the suit? A. I don't know as I heard anything about that.

Q. You don't think you ever heard anything about that? A. Not until you are talking about it here today.

Q. Didn't you read in the Danbury News to the effect that they had been sued? A. I don't know that I did.

Q. Didn't you read the Danbury News when you were down at Mr. Bergs? A. No, sir.

5848 Q. Didn't take it down there? A. No, sir.

Q. You were there how long? A. Several months.

Q. And you came back just before Mr. Loewe's men left? As I understand it? A. I think I was there then, I think it was then. I might have the dates confused, but I think it was then.

Q. You never read the News while you were down there at Berg's at all? A. I was away several months and if a copy of the News should come to me why I would have read it I suppose. I don't remember getting a copy of it. I did

come up home once or twice in that time, but I don't remem- 5849
bering reading the News in that time.

Q. Well, now, in May 1903 you were in Danbury weren't you? A. Yes, sir.

Q. Now in May 1903 there appeared in the Danbury News a full account of Mr. Moffitt's report of the operations of the United Hatters under a large headline; are you willing to testify you never read any of that? A. Am I willing to testify that I never read any of it?

Q. Yes. A. I don't know anything about it.

Q. You don't recall whether you read it or not. Perhaps I better show it to you; perhaps if you look at it you may be 5850
more likely to refresh your recollection, showing the witness the Danbury News of May 18, 1903, page 3. A. I don't believe I ever read that. The language is such that it seems I might have remembered it, but I don't remember ever reading it.

Q. Now you testified that you had at times looked into or read the Journal, did you not? A. I have picked up the Journal and looked at it.

Q. Didn't you ever read any report of any officers or portions of them? A. I don't think I ever did. I will tell you candidly when I picked up the Journal it was some years ago 5851
and I worked in Newark and I simply picked it up, I knew a good many men down there, and I looked over the deathlist. I know that was my principal object in looking into the Journal.

Q. Didn't you ever read the convention proceedings? A. I don't think I ever did. If it was there it was so meager.

Q. You knew what this journal was, didn't you? A. I suppose so, yes, sir, it is the Hatters Journal.

Q. You knew it was the official publication? A. I knew it was published by the Hatters, I didn't know whether 5852
it was official or anything of the kind. I knew it was published by them.

Q. You knew you were to look in there for information concerning your organization, didn't you? A. I never had occasion to look into it for anything of the kind, I never looked into it for any information concerning the trade or anything of the kind.

Q. I thought you said you looked into it for information concerning the members of the trade? A. Yes, members of the trade.

5853 Q. And payments of death benefits and so forth, I suppose it is all recorded in there? A. Yes, sir, I think I have seen it.

Q. It was distinctly understood, if you wanted information concerning your organization you would naturally turn to the journal, wouldn't you? A. I wasn't so much interested in it as that.

Q. Did you receive a copy of that Exhibit 86? A. I received something of the kind. I don't know if it is exactly like this.

Q. Received it about the time of the Loewe trouble? A.
5854 Well, something came to the house, as I say.

Q. Just about that time? A. I think something of this kind, I don't know, I laid it to one side.

Q. I say the thing you are referring to, the paper you are referring to, came to you about the time of the Loewe trouble, shortly after the strike? A. I couldn't tell you the dates, perhaps about that time, I imagine so.

Q. Well, this is your name and address in 1902 as appears in this directory, Cole Place? A. That is what I said, pardon me, when Mr. Beach asked me where I lived, if I had lived there so long, that is the time I moved from Coles
5855 place to 72 Elm Street where I now live, I had moved you see at that time, that was my address and now I live at 72 Elm Street. I couldn't tell you just how many years I did live there. I meant no discourtesy to Mr. Beach when I answered him as I did, that I didn't know how long I had lived there.

Q. Did you ever see one of these circulars? (Showing the witness a paper.) A. I don't think I ever did.

Q. Is that a matter of recollection or a matter of positive statement on your part? A. I don't know anything about them I never see them that I know of.

Q. Now when you heard about this Roeloff suit, didn't
5856 you understand that it grew out of an attempt to boycott the Roeloff concern? A. No, sir, I never knew what it grew out of.

Q. Didn't you understand it was a suit brought against your organization because of a combination to injure the Roeloff business? A. No, sir.

Q. Did you have any understanding about it at all at that time? A. No, sir, I never knew anything about it, as I say.

Q. When you heard about the Berg trouble, what did you hear? Or didn't you hear then that they had sent agents

out on the road to boycott their goods? A. Why, I don't 5857
think I knew anything about the Berg trouble until I worked there and then I understood the Berg trouble was all over, but what it was about I didn't know.

Q. Never knew? A. No, sir.

Q. Don't you remember paying a special assessment? A. No, sir.

Q. In order to send the agents out on the road? A. Why, such a thing is possible, you know, they made assessments occasionally in the trade for something or other.

Mr. Beach:

The question is whether you knew the purpose of it? 5858
A. It is possible.

Q. Now Mr. Blackburn, to leave this part of your testimony, as I understand it, it is in this way; you are unable to testify as to whether you attended any meetings during the years 1900, to 1903, but you are willing to testify positively that you never heard that your organization was engaged in boycotting there way back in 1898 down to the time of this suit, although the records show that such was the fact and it had been generally published broadcast? A. Did you ask that as a question?

Q. Yes, sir, I want to know if that is the way you want 5859
to leave your testimony on this point? A. Yes, sir.

Q. It is? A. Yes, sir.

Q. Now when you were sued in this case, you continued a member paying dues? A. Yes, sir.

Q. And you made no effort to prevent a re-election of the same officers at the 1907 convention? A. I didn't go to any meeting that I know of, I can't recall it.

Q. You mean that you did make no efforts then? A. Yes.

Q. And you made no protests to any officers? A. No.

Q. And did you receive one of these papers concerning 5860
the employment of counsel? A. I think I did, yes, I think so.

Q. You think you signed it and sent it back to Mr. Connolley? A. Yes, sir.

Q. And you took no other steps concerning the defense of the action? A. No, sir.

Q. You had a savings bank account attached? A. Yes, sir.

Q. And you received the full value of that account? A. Yes, sir.

5861 Q. Paid to you? A. Yes, sir.

Q. Who paid it to you? A. I went to New York and got it, I don't know just who did give it to me.

Q. You went to New York and got it; don't you remember the man who gave it to you?

Mr. Beach:

Ask him where he went to get it, he don't remember the man.

Q. Where did you go to get it, Mr. Beach suggests. A. It seems to me I went down—I went to one place and another, I don't know just where I did get it. I know I

5862 went originally to the Hatters offices on Waverly Place, I think it was, but whether Mr. Moffitt or Mr. Phillips gave it to me I don't know. I was kind of glad to get it.

Q. Now, have you always worked just as an ordinary journeyman at the trade, and not as a foreman? Are you a foreman? A. I am flanging hats as a journeyman hatter today, and was in 1902. I was working then as a journeyman hatter, that is at the bench. I was not a foreman then.

Q. After you came back to Danbury in 1902, didn't you have any talk with any of the men whom you were working with, concerning the Loewe matter? A. I don't remem-

5863 ber having no talk about it.

Q. When these warnings were sent out and when you received one, didn't you ever discuss the matter with any of the journeymen? A. Very little if any, I can't call to mind discussing it. It is possible though being interested, I might have done it.

Q. You simply don't recall? A. I don't recall it.

Q. Well, didn't you have any discussion with any of them concerning efforts being made to unionize the Loewe factory? A. No, sir.

Q. And concerning agents being on the road, concern-

5864 ing them? A. No, sir.

Q. But you don't recall whether or not you talked with them, and yet you are positive that way back there in 1898 down to 1903 you never heard anything or read anything concerning your organization conducting boycotting? A. I never read anything about the organization boycotting.

Q. Or heard aything about it. All right.

5865

JOHN KEOUGH

sworn by the Clerk.

EXAMINED

By Mr. Mulholland:

Q. State your full name? A. John Keough.

Q. Is there a u in it? A. Yes, sir.

Q. K-e-o-u-g-h? A. Yes, sir.

Q. Where do you live, Mr. Keough? A. 162 Triangle 5866
St., City of Albany.

Q. 162 Triangle St., City of Albany? A. City of Danbury, I mean to say, excuse me.

Q. How long have you lived in the city of Danbury, Mr. Keough? A. Going on 34 years.

Q. Married and a family? A. Yes, sir.

Q. And you are a defendant, I believe, in this case? A. I don't know how to answer that question.

Q. Well, you are a defendant aren't you? A. Some says I am, and some says I am the witness here, I don't know which is right.

Q. Now I don't want to go over the argument again 5867
with you that I had. A. Well, that is my answer, you can take it candidly.

Q. Was your property attached? A. Yes, sir.

Q. I guess you are a defendant all right. A. Well, you can have it as you please.

Q. Now Mr. Keough, I wish you would answer the questions and not get into an argument. A. I have answered it like a gentleman.

Q. You simply answer the questions and not have any feeling about it? A. I had ought to have a feeling about it.

Q. How old did you say you are? A. I didn't say 5868
anything about my age yet, but I am going to now.

Q. How old are you? A. Between 34 and 35, I mean between 74 and 75.

Q. How long have you been working at the hatters business making hats? A. I never made a hat in me life.

Q. Well, I mean helping making hats? A. Probably about 30 years.

Q. You are a member of the hatters organization? A. That is one of the unions?

5869 Q. Are you a member of one of the hatters unions? A. Oh, excuse me, yes I am a member of No. 10 local of Danbury.

Q. Is that the Finishers? A. The Makers Union.

Q. Do you remember back in 1902 hearing of some trouble in Mr. Loewe's factory? A. I do.

Q. How long was it after the men came out on strike that you first heard of it? A. After they came out on strike?

Q. Yes? A. I heard of it before they ever came out on strike, that there was trouble there.

5870 Q. Well, referring to that time, did you know there was going to be a strike before the men came out at Loewe's plant? A. No, how could I know it, I didn't know anything about it until the men was out, and I wouldn't know it.

Q. Yes, that is just what I was asking about. A. I didn't know anything about it until they came out.

Q. Never heard of it. It was after they came out that you heard of it? A. That I heard of it.

Q. How long was it after the men came out that you heard it, that they had come out? A. I suppose the same day they came out I heard it.

5871 Q. Do you recollect when you heard it? A. In the shop I worked in.

Q. Where were you working at the time? A. I was working in what they call Beckerle & Co.'s shop in Danbury.

Q. In Danbury? A. Yes, sir.

Q. How far is that shop from Mr. Loewe's shop? A. Probably about half as far as from here to the depot to the best of my knowledge.

Q. Now did you say that prior to the men coming out on strike, you had never heard of the trouble in Loewe's shop, that is the first you heard of it, was when you heard the men were out? A. Oh, no, I heard they were trying to

5872 unionize Loewe's shop before the men was called out at all.

Q. How long before? A. I don't know, I didn't keep track of it.

Q. You have no idea how long it was before? A. I heard of it, that's all.

Q. Mr. Keough, prior to the time you heard the men came out of the Loewe factory, did you know that the officers and agents of your organization were boycotting people in states other than Connecticut? A. I did not.

Q. Had you ever heard of it? A. No, sir.

Q. Well, after the Loewe trouble, that is after you heard 5873
that the men were out on strike, and up until the time your property was attached, did you hear that your officers and agents were boycotting Mr. Loewe's goods? A. I did not. I heard they had agents out on the road advertising the union label.

Q. Well, did you know that those agents on the road were doing anything else than legitimate advertising of the label? A. No, sir, I did not.

Q. Mr. Keough, have you ever knowingly been a party to a conspiracy to destroy any one's interstate commerce or to boycott any one's goods? A. I have not. 5874

Q. Going back to the year 1903, that is, up until the time that your property was attached, to what extent did you read the journal of the United Hatters? A. The journal of the United Hatters?

Q. Yes, sir. A. I want to see if I understand what you mean; you mean the paper that the hatters printed, or had printed?

Q. Yes, the one that was left around the shop some times, did you ever read that? A. I did.

Q. To any great extent? A. No, once in a great while.

Q. Well, in that journal did you read anything about 5875
boycotting? A. I don't think I did. I don't think I saw the article. If I did, I forget it.

Q. Did you ever read a magazine or publication called the Federationist? A. Oh, I have never had that.

Q. Do you know who publishes it? A. I never saw that to my knowledge.

Q. Do you know who publishes it? A. No, sir, I don't.

Q. Are you a member of the American Federation of Labor? A. I am not.

Q. You don't know if you are? A. I am positive if 5876
I was a member of it wouldn't I know it.

Q. Well, do you remember when the organization of which you were a member, that is, the Makers Union did you say? A. Yes, sir, I am a member of it.

Q. Do you remember when you joined the Finishers Union and it became the United Hatters of North America back in 1896? A. When we joined the Finishers Union?

Q. Yes. A. I don't know anything about it. That is the first time I ever heard of it.

5877 Q. Did you not hear that the Finishers Organization and the Makers organization came together and organized the United Hatters of North America? A. I have not. Of course I know they united, or called them united, but I never knew them two branches to be together, but separate. I understand they are separate today.

Q. Well, I guess we understand each other. Did you ever hear of the Berg trouble? A. I did, I heard the name.

Q. Did you ever hear of any boycotting in connection with that? A. I don't know anything about it. I heard the name.

5878 Q. You know where the plant is? A. I don't know anything about it, I don't know where it is at all.

Q. Did you ever heard about the Roelof trouble? A. Yes.

Q. You know where the plant is? A. I don't know where that is even.

Q. Did you ever hear of any boycotting in connection with it? A. I don't think I did.

Q. To what extent have you attended the meetings of your organization? A. I didn't attend them at all.

Q. I mean since you were 50 years old? A. I didn't

5879 attend them at all.

Q. How many years has it been since you have attended a meeting? A. I couldn't tell you, I believe since I first got a union card, I don't believe I was at a hatters meeting with the exception of two or three.

Q. That is during all the time of your membership? A. Yes, sir.

Mr. Mulholland:

That is all.

CROSS EXAMINATION

By Mr. Merritt:

5880 Q. You have read the hatters journal occasionally? A. Once in a while I did, very seldom.

Q. Did you ever read it in 1902 and '03? A. Now I couldn't give you that, I read it, but I only read it once in a while, that is all.

Q. Did you read the reports of your officers in it? A. Well, I couldn't read it without reading the reports, simply what is there or portions of it, I could read portions of it, and I have seen portions of their reports in it, and other reports, that is all.

Q. How about the reports of your agents who are on the road advertising the label? A. Well, I don't think I ever saw much about them in there, in fact, I don't know whether I did or not. I don't think I did. I don't suppose they let me know much about what their agents are doing on the road. 5881

Q. Why do you suppose that? A. That is all I know about it.

Q. Why did you suppose that? A. Because every man they say should mind his own business.

Q. Yes, I know, but it is your money that was sending the agents on the road, wasn't it? 5882

Q. Did you think that the agents were doing something they ought not to do, and for that reason you didn't pay any attention to it? A. I never made up my mind what the agents was doing, and I never took any interest in what they were doing, because it was something out of line of business.

Q. Was the Journal in that form when you saw it? (Showing the witness a bound volume). Of course you understand these are bound? A. Something familiar about that, something familiar about it, just a few sheets of paper.

Q. Didn't you ever read any of those headings, "News from our agents"? A. I might and I might not. Probably I have seen it, if I looked them through I couldn't help but see it. 5883

Q. I thought you must have. There are reports of the agents, 5, 6 or 7 pages, from the agents. A. Very little I remember I heard about the agents.

Q. Well, you state, however, that you read reports of some of the officers? A. Why, portions of them certainly.

Q. And portions of the agents reports? A. Oh, I will say no to that. I know nothing about the agents reports. I don't think I ever saw an agents report in what they call the hatters journal. 5884

Q. Didn't you just state here to me now that you thought you had read that statement there? A. They was the reports in the Local, aren't they, not the agents on the road.

Q. No, that was the report of the agent? A. Well, I took it to be the report of the home officers.

Q. "News from our agents, William C. Hannerly." And in other places. A. I don't know anything about them. I don't know anything about that at all.

5885 Q. Didn't you ever read that heading "News from our agents"? A. I don't know whether I did or not.

Q. Well, you can't recall just what you did read in that account? A. I tell you I read very little of it. I can't tell you what I did not do, what I don't know I didn't do.

Q. But you did read the reports or portions of the reports of the officers? A. Some times, occasionally, certainly.

Q. They included the report of President Moffitt? A. Very little I ever read of President Moffitt's.

5886 Q. Did you subscribe to the Danbury News in 1902 and 1903? A. What do you mean by me subscribing to the Danbury News in 1902, do you mean me taking that paper?

Q. Were you a regular reader of it in 1902 and 1903? A. I think I was.

Q. Didn't you read various items of news in that Danbury News concerning the organization? A. Well, to be frank with you now, I read more in the Evening News about these things than I did in the Danbury News because they are two different papers, and the Danbury News is a paper I don't take much stock in and I don't handle it but little.

5887 Q. Let us understand what the difference in them is. A. The Danbury News is a weekly paper, and the Evening News is a daily paper. The Danbury News is a weekly paper and the Evening News is a daily paper, five days a week.

Q. And you read the Evening News? A. Yes, sir, I subscribed for the Evening News but not the Danbury News.

Q. Didn't you read in the Evening News concerning your organization? A. Anything and everything that was in it, I used to read, so that answers the question.

Q. I guess that answers all the question. Well after 5888 this suit was started you continued a member? A. Member of what?

Q. Of the United Hatters? A. After the suit started?

Q. Yes. A. Why certainly, I was a member of the United Hatters and the suit going on.

Q. You continued paying dues? A. No, sir, I continued paying dues or rather a percentage up to the time I stopped working in the hat shop.

Q. When did you say that was? A. Oh 3 or 4 years ago probably. I have not worked in the hat shop since.

Q. Did you take any steps to prevent the re-election of the same officers? A. I never took no steps to elect a man, a union officer or a non union officer, never had anything to do with their election. 5889

Q. And you never took any steps to prevent their re-election since this suit was started? A. No, sir, if I did, it wouldn't be no use to me, so I made up my mind I would have nothing to do with their election.

Q. Did you receive one of these letters from Mr. Connolley concerning the employment of counsel? A. I did not, never saw one of them.

Q. Did you receive any letter of any kind from any of the officers? A. All the letter I ever received was after my property was attached, and my money. I was told that if I wanted either one liberated, to go and see Mr. Connolley and that he would liberate my money for me. Now if you want to have me repeat the rest of it I will. I went to Mr. Connolley— 5890

Q. No, never mind. A. All right, that settles it.

Q. We won't quarrel with you over it? A. No, we can't quarrel of it now.

Q. Did you receive one of these warnings, Exhibit 86? A. I did not.

Q. Now in this directory of 1902 of Danbury your name appears as "John Keough, hat blocker, 162 Triangle Street"? A. Yes, sir. 5891

Q. Was that right in 1902? A. I was living in Triangle Street, the same as I am now.

CHARLES SHAFFER.

Sworn by the Clerk.

EXAMINED

By Mr. Beach:

Q. What is your name? A. Charles Shaffer. 5892

Q. Charles F. Shaffer? A. Just Charles, without any initial.

Q. Where do you live, Mr. Shaffer? A. 12 Brookside Street, Danbury, Connecticut.

Q. How long have you lived there? A. Somewheres about 18 years I think.

Q. How long have you lived in Danbury? A. 34.

Q. How old are you? A. Well I am very near—well we will have to call it 55, very near 56.

5893 Q. A family man and children? A. Yes, I have a son.

Q. Are you a member of one of the local hatters unions in Danbury? A. I belong to the Hat Finishers Association.

Q. How long did you belong to that association prior to 1903? A. Prior to 1903, about eleven years I think, oh no, about twenty one, twenty one years.

Q. You don't mean 21 years before 1903, you mean 21 years up to the present time? A. I joined it in 1882, that would make 21 years, wouldn't it?

5894 Q. Yes, that is right, 1882. A. 1882, February the 17th.

Q. Have you ever been a delegate to any convention of the American Federation of Labor? A. No, I have not.

Q. Confining yourself to the period before October 1st, 1903, have you ever been a delegate to any convention of the United Hatters? A. I have not.

Q. Or were you before that last named date, at any time an officer of the local or National union? A. No.

Q. Were you before that date a regular reader of the journal of the United Hatters? A. I never read the journal, never took the journal to read but once, and then I wanted

5895 to find out the deaths, the number of deaths into it, and the apprentices and the number of journeymen, and I got hold of that—

Q. That answers my question, that you were not a regular reader? A. No.

Q. Do you remember reading anything else in the journal except what you have just testified to? A. No.

Q. Did you ever read the American Federationist? A. You would have to show me one, I never saw one.

Q. When did you first learn of any trouble in Mr. Loewe's factory in 1902? A. Well I heard of it in the factory I think where I worked.

5896 Q. Was that before or after the men were out? A. After the men were out.

Q. And from that time until you were served with papers in this case, did you or not know that any agent or officers of the United Htatters were pursuing Mr. Loewe's goods or customers in the various states of the Union? A. I knew there were agents out, but not to pursue Mr. Loewe's goods. They were out advertising the label.

Q. Did you know whether or not they were in fact pursuing Mr. Loewe's goods? A. No, I didn't know they were pursuing Mr. Loewe's goods. **5897**

Q. Now I will ask you that question in regard to Mr. Berg & Co.; did you know of any trouble with the firm of Berg & Co.? A. I never knew anything about Berg until after everything was all settled in the district. I heard that they had trouble down there, had a strike in Orange, or wherever it was, was it Orange or New York?

Q. Orange. A. Orange.

Q. Did you or not know that the officers and agents of the Union were said to have been pursuing Mr. Berg's customers? A. No, sir, I never knew anything about that. **5898**

Q. Did you know of any trouble with the Roeloffs? A. No, not until I heard it here today.

Mr. Beach:

I think that is all.

CROSS EXAMINED

By Mr. Merritt:

Q. Did you attend any of the meetings of your local society? A. Why I used to go down, and we had a fine for non attendance, and I would go down to the meeting place and stay there a few minutes and get excused, in order to have my name go on the roll whether I was in attendance or not, to get rid of the fine, so I never was there at any meeting. I am not much of a society man anyway. **5899**

Q. Didn't you stay long enough to hear any report? A. No I never stayed long enough.

Q. Of any such transactions? A. No, sir, I never stayed, not for any report.

Q. You always left before anything was done? A. I made it a point to get out just as soon as I could.

Q. Well, as a matter of fact, that was always before anything was done at the meeting? A. Yes. **5900**

Q. Were you a regular reader of the Danbury News? A. I take the evening News. I don't always read it, sometimes it will lie a week in the house. I don't have time to read.

Q. As a usual thing you read it? A. Not as a usual thing. There is lots of local news passing and I don't know anything about it.

Q. That is not what I mean; as a usual thing you read something from every issue of that paper? A. I might take

5901 it and look at the Associated Press news and let it go at that.

Q. Haven't you ever read in the Danbury News any items concerning the Hatters organization? A. Very few, if any.

Q. Well do you recall any that you ever read? A. No, I can't recall one.

Q. Well, you have heard me read here certain things from the Danbury News? A. I have heard you read a whole lot. Now read some to me.

5902 Q. I didn't know but perhaps you had overheard some of these and you might remember that. Here is this article in the Danbury News in 1900 about advertising the hat label: "United Hatters spent $30,000 in two years for the purpose —" A. Does the News always get everything right?

Q. Now let's not enter into any argument in regard to that. A. All right.

Q. The point is, the only thing I want to find out from you is, whether or not you ever read these matters, have you ever seen them in the paper? A. Well put it down no, I will say no.

5903 Q. You mean when you say no, you are sure you have not? A. I say no.

Q. Now you have said you heard something about the Berg affair? A. Yes.

Q. Can you state whether or not you read anything in the Danbury News in regard to it? A. No I did not.

Q. You can state that you did not? A. I can state that I did not read it in the Danbury News.

Q. Now in reference to the Roeloff suit matter, or the Evening News? A. Evening News?

Q. You understand I mean the Danbury News or the Danbury Evening News? A. I understand both papers.

5904 Q. I mean both papers? A. It applies to both.

Q. You never read anything in the Evening News or the Danbury News as to the Roeloff matter? A. No.

Q. Never read anything in those papers as to the Roeloff suit? A. No, not until I heard it here today.

Q. Don't remember any such article as this? A. No.

Q. "United Hatters sued, H. H. Roeloff of Philadelphia, wants $250,000 damages." A. No, sir.

Q. You never read that such a suit was started? A. No.

Q. Never knew that your organization had had any trouble with Roeloff? **5905**

Mr. Merritt:

I mean prior to the commencement of this suit.

Witness:

Well, after this suit, the first time I heard something about it.

Q. I mean before this suit was commenced, did you ever read that your organization had any trouble with Roeloff's? A. No, I never knew anything about Roeloff or Rudolph, or those people.

Q. You never heard anything about it? A. I know **5906** nothing of their business.

Q. Never read anything in the paper about it? A. No.

Q. Or heard any of your fellow workmen talk about it? A. No.

Q. I will ask you the same in regard to Berg, whether or not you ever heard any of your fellow workmen discuss the Berg matter? A. After the thing was all settled, there was a person came to my house and said they had had a strike down to Berg's, but there wasn't much talk about it.

Q. Was that a member of the organization? A. No.

Q. Well didn't you understand that agents had been sent on the road in reference to Berg's product at that time? **5907**
A. No.

Q. Didn't you understand that agents had been sent on the road? A. I understood this, that they had agents on the road that was advertising the label in a lawful manner, not in any other way.

Q. Didn't you understand that they were particularly going to those places— A. What places?

Q. Where Berg sold hats? A. No.

Q. Never heard that? A. No, I never did.

Q. Never heard that in regard to Roeloff? A. No.

Q. Did you receive a copy of that warning, Exhibit 86? **5908**
A. No, I never received a copy like that, or anything like that.

Q. We will look at Plaintiff's Exhibit 112 for identification, which is the Danbury Directory of 1902, I see your name there as "Charles Shaffer, hatter, house 12 Brookside"; A. That is right.

Q. Is that correct? A. That is correct.

Q. Where you lived at that time? A. Yes.

5909 Q. Did you ever see that warning in the Danbury News? A. No.

Q. Where were you working at that time? A. John W. Green & Son.

Q. Is that a union factory? A. Yes.

Q. All the men working in the same room are union men? A. There were only a few men in the room where I was working.

Q. They are all union men? A. They are all union men.

5910 Q. Every man in the factory practically were union men? A. Where I worked there is five in the room.

Q. How many are there in that factory? A. I couldn't tell you.

Q. Well is a large factory, wasn't it? A. Yes.

Q. Over two hundred men anyway? A. Oh, no, I don't think so, I don't think there is over—well, there might have been fifty, I won't undertake to say how many there was in there. I don't think there was 200 jours in there, makers and finishers.

Q. You are willing to testify you didn't hear any one in Danbury mention this warning that was sent out in 1902?

5911 A. No.

Q. You are willing to so state? A. Yes, sir.

Q. You never heard any one mention the fact that your agents were attempting to prevent the sale of hats of any of these concerns? A. Hats of who?

Q. Berg, Roeloff or Loewe? A. No.

Q. What did you understand that your agents were doing? A. Why advertising or demonstrating the label to the labor organizations as people go around with chocolate, etc., to show it up.

Q. You didn't understand they were taking any hats with them, did you?

5912 A. Why I supposed they did take the hats and the label too, and show where the label was put in the hat.

Q. They didn't take any hats with them for sale? A. No, not for sale.

Q. Your understand was that they went to the various unions in different parts of the country? A. Yes, in the interest of organized labor.

Q. That is in your interest? A. Yes.

Q. And didn't you also understand that they went to the dealers in different parts of the country? A. What?

Q. Didn't you also understand they called on dealers in different parts of the country? A. No, I didn't understand that. **5913**

Q. That never came to your attention in any way? A. No.

Q. Either by talk with any one, or through reading any newspapers or otherwise? A. No.

Q. Now let me see if I understand your testimony? A. Well—

Q. You have lived in Danbury during all this period of time? A. Yes.

Q. And you have had the Danbury News in your house? **5914** A. I have had the Danbury News.

Q. You have seen the evening Journals around where you could read them, haven't you, in the factory where you worked? A. A few.

Q. And the men in the factory where you worked I suppose attended these meetings of your local unions? A. I don't know, I couldn't say as to that.

Q. You are willing to testify that you absolutely never heard of these matters, and they never came to your attention in any way, or are you testifying simply that today you don't recollect their having come to your attention? A. I am saying—I answered you no to your question. **5915**

Q. That is, you are willing to swear positively? A. Yes.

Q. Over a period of fourteen or fifteen years? A. Yes.

Q. That certain matters never came to your attention either through any reading, or through any conversation with any one? A. I have too much work to have anything else come to my attention at those times.

Q. Let me see if you answered the question. Are you willing to testify in the face of this record that you never heard of any matter of this kind, or that you simply do not recall having heard of such a matter? A. I never heard of such a thing. **5916**

Q. You are willing to swear positively on that point? A. Yes.

Q. Your recollection is sufficiently clear in your mind for a period of fourteen years? A. What is that, what do you mean, Berg and Rudolph's?

5917 Q. Anything relating to boycotting, in regard to your organization? A. What is a boycott? Tell me what that is.

Q. I mean an attempt to prevent the sale of goods by any manufacturer? A. I say no.

Q. And no such attempts by any of your agents? A. And my answer is no.

Q. And no attempt to prevent the sale of any Berg, Roeloff or Loewe goods? A. I have to answer no.

Q. And you are willing to swear positively? A. I am.

5918 Q. And over the period that all of this evidence covers on such matters, at no time did it ever come to your attention? A. No.

The Court:

He has given an answer to that several times.

Q. After this suit was started, did you continue a member paying dues? A. I have continued a member, and I am a member still.

Q. Well did you make any effort to prevent the re-election of the same officers? A. I never made any effort to have any officers elected, and I never made any effort not to have them elected.

5919 Q. You were satisfied with the conditions? A. I was satisfied with the conditions? Well, a man may not be satisfied, yet he will keep quiet.

Q. You didn't make any protest, you kept quiet? A. I didn't make no protest, I haven't made any protest.

Q. Did you receive one of these letters concerning the employment of counsel? A. Concerning the employment of counsel?

Q. Yes? A. From Connolley?

Q. Yes? A. Yes, sir.

5920 Q. You signed it? A. Yes, I signed it, yes, I don't know whether it is like yours or not, I couldn't say. It was a very few lines typewritten on a piece of paper.

The Court:

Do you know of more than one?

Witness:

What?

The Court:

Do you know of more than one?

Witness:

I don't. I don't know of only one that I had.

Q. That is the only circular or letter? A. I think it was about three lines of typewritten matter onto a slip of paper that I signed. 5921

Q. Was that attached to a longer letter? A. No letter about it, I don't think so.

Q. You don't think there was any letter enclosed? A. No, I don't think so, just merely a piece of paper for me to sign.

The Court:

Well you better show him the letter you understand to be the copy.

Q. This is Mr. Connolley's letter as we understand it: "Danbury, Conn., September 14, 1903. 5922

Dear Sir: You are named as one of the defendants in the two suits brought by D. E. Loewe & Co. against the United Hatters of North America, and other parties.

The United Hatters of North America are going to defend anyway in their own name both of the suits; but unless each individual member who is sued also enters an appearance, judgment will go against him anyway by default. The United Hatters of North America, however, are willing to enter an appearance for each individual who has been sued individually, and pay all expenses of such 5923 defense, and save such individual from all liability from either of the suits, provided such individual authorizes in writing such appearance to be made for him.

The United Hatters of North America will also at their own expense apply for, and, if possible, obtain releases from attachments of the private property of any individual defendant whose defense they undertake.

If you desire to save yourself any further expense please sign the annexed paper and return in the enclosed stamped envelope by return mail. If you had any deposit in any bank which you think may have been attached, 5924 please write the amount, and the correct name of the bank where it is deposited, so we can apply for its release.

Our reason for asking this is that the attachment papers of D. E. Loewe & Co. are drawn so blindly that it is impossible to tell whose bank deposits have been actually attached without going to the banks and running through two hundred names, or else getting the name from each defendant, and it is quicker to get it direct from

5925 each defendant. Yours truly, The United Hatters of North America, by P. H. Connelly." A. Well, I didn't get anything of that kind.

Q. Now see whether you received anything of this kind, and signed anything of this kind.

"Danbury, Bethel, Norwalk, Sept. 14, 1903. Mr. P. H. Connelly, Secretary, and the United Hatters of North America.

My Dear Sir: I have read your letter of this date, and I hereby authorize you to have counsel enter an ap-

5926 pearance for me in my name in each of the two suits recently brought by D. E. Loewe & Company against me and others, one returnable to the Superior Court, Fairfield County, State of Connecticut, and the other to the United States Circuit Court, District of Connecticut.

And I further authorize and empower you to conduct my defense to final judgment and through as many courts as you or the counsel whom you employ deem proper, and to do both before and after the return dates in each of the suits, all things you or your counsel think proper.

But, upon the express understanding that I am not

5927 to be put to any expense for such defense, or for the payment of any judgment. Yours truly."

And a blank is left to fill out the savings bank. A Now I will say no, I did not receive any such thing.

By the Court:

Q. You mean you had a different letter from that? A. I think it was different, it was one very short.

Q. The one you signed was different from that? A. I think so, yes.

Q. Are you sure about that? A. Well I am pretty sure, yes.

5928 Q. Was there anything different?

Q. You received this paper which you signed, and there were two or three lines? A. Well as I remember it now.

Q. Wasn't there any letter enclosed with it with instructions or in explanation? A. No, my letter was torn open when I got it.

Q. Where did you get it, at your house? A. At my house.

Q. Then it is possible that you did not see everything that was in it? A. I couldn't say as to that.

Q. But all you saw in that letter was this letter for you to sign? A. Yes. 5929

Q. And no letter of explanation of any kind to send it to Mr. Connelly or any other officer? A. No.

By the Court:

How did you know what was meant?

Mr. Mulholland:

The court asked a question of you.

Witness:

Sir?

The Court:

How did you know what was meant? 5930

Witness:

Why some of the other jours told me that I should turn that over to the United Hatters, where I was working.

The Court:

That is all.

PATRICK T. McCARTHY,

sworn by the Clerk.

EXAMINED 5931

By Mr. Mulholland:

Q. Where do you live, Mr. McCarthy? A. 29 Center Street, Danbury, Connecticut.

Q. Are you married? A. Yes, wife and five children.

Q. How long have you lived in the city of Danbury? A. About 22 years.

Q. What is your present age? A. 44.

Q. Mr. McCarthy, when did you begin working at hatting? A. Why 1885.

Q. And have you lived in Danbury practically all the time since? A. No, about 22 years. 5932

Q. Where did you work before you went to Danbury? A. In Bethel and Hawleyville.

Q. I wish you would state to the jury whether you have always lived in either Danbury or Bethel? A. I have lived in Danbury 22 years.

Q. How long were you in Bethel? A. I was in Bethel while I was serving my apprenticeship, a part of it.

5933 Q. What branch of the trade do you work at, whether making or finishing? A. Making.

Q. Are you now a member of the Danbury Makers Union? A. Yes, sir.

Q. Did you ever work for Mr. Loewe? A. No.

Q. Ever been in his factory? A. Not prior to this trouble. I have since.

Q. Prior to this suit? A. I have been there once since.

Q. Do you remember the trouble occurring in Mr. Loewe's factory in the summer of 1902? A. Yes.

5934 Q. Where were you working at that time? A. Connett & Co.

Q. That is in Danbury? A. That is in Danbury, yes.

Q. Well, did you hear of any of this trouble the same day or subsequently? A. That night I should judge about half past eight.

Q. How did you happen to hear of it? A. Why I met a business man coming from work, I got through work at half past five, so it took me perhaps half an hour to get dressed and ready to go out on the street, and when

5935 I came out on the street at half past five, I met a business man on the street and he told me the men at Loewe's were out.

Q. Prior to that time had you ever known that the agents and officers of the hatters organization were conducting boycotts against employers of labor? A. No.

Q. After you learned that the men had gone out on strike in Loewe's plant, and up until this suit was commenced did you know that any of the officers or agents of the United Hatters of North America were boycotting

5936 Mr. Loewe's goods? A. I did not.

Q. What I mean is, did you read of that or hear of it in any way whatsoever? A. No.

Q. Did you know of any trouble along in the early nineties, I mean along about 1900, or shortly before, in Berg's plant? A. No, I did not.

Q. You know where Berg's plant is located? A. No, I couldn't say that I do.

Q. Did you know of any trouble in the Roelofs factory? A. No.

Q. You know where their plant is located? A. Yes. 5937
Q. Where? A. Philadelphia.
Q. Did you ever work there? A. No.
Q. I will ask you if you ever heard in any way of any boycotting carried on by the United Hatters of North America against either of those two firms? A. No.
Q. Have you ever been an officer of your union, that is, prior to the commencement of this suit? A. At no time.
Q. Have you ever been a delegate to any of the conventions? A. No.
Q. Have you ever been a delegate to any convention 5938
of the American Federation of Labor? A. I never have, no.
Q. Or any other association of labor? A. No.
Q. Did you ever read a magazine called the "Federationist"? A. No.
Q. Do you know who publishes it? A. I do not.
Q. I will ask you to what extent you were attending meetings of the United Hatters of North America prior to the commencement of this suit, going back say for several years? A. Well I didn't attend very many meetings. 5938
Q. How many meetings of your organization were held each year? A. Well that I couldn't tell you.
Q. Do you know how often they were holding regular meetings at that time? A. Why they hold their meeting the first Thursday of the month, I think.
Q. How many times a year? A. Well that I couldn't tell you.
Q. Did you know that they held meetings every three months, four times a year? A. No.
Q. Can you give the jury any idea, say from 1896, well take it later, say from 1898 until the time this suit 5940
was commenced, how frequently you were attending meetings of your organization? A. Well I don't think I attended over three meetings.
Q. In what length of time? A. In all that time.
Q. I understand you to say you never heard in any way of any boycotting conducted by your organization? A. I did not.
Q. Prior to the commencement of this suit were you ever knowingly a party to any conspiracy to destroy

5941 the interstate commerce of Mr. Loewe or any other man? A. Not knowingly, no, sir.

Q. Or did you ever knowingly participate in any conspiracy to interfere with or to boycott any employer? A. No.

Q. You understand what I mean by boycott? A. Why yes, I don't know as I do either.

Q. Suppose we take this definition of boycott, the united efforts of your men to induce people not to trade with Mr. Loewe or with any other employer. Did you ever participate in such conduct as that? A. In no such

5942 affair of that kind, no.

Mr. Mulholland:

You may take the witness.

CROSS EXAMINATION

By Mr. Merritt:

Q. Now, Mr. McCarthy, do you want to testify that in the course of the entire history of the United Hatters that it never came to your attention in any way as to what the agents were doing on the road? A. Yes, sir.

Q. You do mean to testify to that? A. I do mean

5943 to testify to that, yes, sir.

Q. You never heard what the agents were doing? A. No.

Q. Didn't you know you had agents on the road? A. I did, yes.

Q. Didn't you ever know what they were doing? A. Why, they were advertising the label as I supposed.

Q. I asked you a moment ago if you knew what the agents were doing and you said no? A. I thought you meant concerning a boycott or something of that sort.

5944 Q. Then you have heard that the agents were on the road advertising the label? A. Yes.

Q. You are willing to testify that either through conversation with the men you were working with, or through the Danbury News, or the Hatters Journal, or in any way, it never was brought to your attention that any one even accused your organization of boycotting? A. I do, yes.

Q. Ever read the Journal? A. What Journal?

Q. Of the United Hatters? A. I read it once or twice I think.

Q. What did you read, do you remember? A. Well, 5945
it was about the insurance feature of the members, that they were a big risk on account of consumption and tuberculosis and diseases of that sort, and I looked it up to see if there was a very big percentage, and that is all I ever read of it.

Q. Have you never attended any local meetings? A. I attended a few local meetings, yes.

Q. Now what did you understand this Journal was for? A. Well, to promote interest of the members, I supposed, as any other paper is published.

Q. And also to inform the members wasn't it, as you 5946
understood it? A. Yes, I suppose so.

Q. Well, you knew your money was being used to send these agents on the road, didn't you? A. Yes.

Q. And that your money was being used in connection with the publication of the Journal? A. Yes.

Q. Did you see this Journal distributed around the factories where you have worked? A. I have seen them in the factory, yes.

Q. But you never looked at them? A. At the Journal?

Q. Yes, except in this one particular one? A. In 5947
that particular case, that is all.

Q. What did you understand the Journals were put around the factories for? A. What did I understand the Journals were put around the factory for?

Q. Yes? A. Why, I don't know as I know, except it was to inform the members of the condition of the trade.

Q. As to what was being done by the organization? A. Yes.

Q. Then that is the way your money was being spent? A. Well, I never watched the finance part of it. 5948

Q. Well, that is what you supposed the Journal was for? A. Well, I won't say that.

Q. Were you a reader of the Danbury News? A. Yes.

Q. Regular? A. Well, not regular.

Q. Didn't you ever read any matters in the Danbury News relating to your organization? A. How do you mean?

5949 Q. Well, didn't you ever read any matters in the Danbury News or the Evening News relative to the Hatters Union or what it was doing? A. Well, that is hard to answer.

Q. What do you mean, you can't say now whether you have or not? A. Why, I would like to have you ask me that again, I didn't quite catch the drift of your question.

Q. I was asking you whether you ever recall now ever having read anything in the Danbury News concerning your Union? A. No, only notices or meetings.

5950 Q. That is all you ever recall? A. Not much.

Q. Were notices of the meetings published in the paper? A. At that time I couldn't say they were, they are now of late years, the last few years.

Q. Don't you recall whether they were published in 1902 and 1903? A. No.

Q. Then the Danbury News has been used as a means to inform your members concerning the meetings? A. At times it has.

Q. Didn't you ever hear of the Roelofs suit? A.

5951 No, I did not.

Q. Never read anything about that in the Danbury News? A. Never read anything about it at all until I heard it here today.

Q. The other day? A. No, here today. The first time that there was a suit by Roelofs, here today.

Q. Have you sat down at any time and tried to remember whether any of these matters ever came to your attention, have you ever tried seriously and conscientiously to recall whether or not you had heard of those things? A. No, I have never sat down and thought of it seriously

5952 until now.

Q. You mean until this examination? A. Until here, yes, because I didn't suppose they would ask any such questions

Q. Did you get one of these warnings, Exhibit 86? A. Yes, I got one of those.

Q. Did you read one in the Danbury News? A. No.

Q. When you received that did you take any action of any kind? A. No, I didn't take any action.

Q. What did you do with it? A. I didn't think it was serious, I didn't pay any attention to it. 5953

Q. You didn't think it was serious? A. No, I just read it and didn't think it was serious, I didn't think it was a serious affair at all. I had not done anything, and did not know why I should get one.

Q. You knew at that time that your organization had called the men out of the Loewe factory for the purpose of unionizing it, didn't you? A. No, nor I don't know it now.

Q. Didn't you read in the Danbury News that your organization called the men out of the Loewe factory for the purpose of unionizing it? A. No. 5954

By the Court:

Q. Did you make any inquiry about the warning after you received it? A. No, I didn't make any inquiry about the warning until after the attachment, and I didn't know what it meant when I got it. I supposed it was something that the people sent out to Labor people quite often, something of that kind.

Q. You supposed— A. I said people send them to labor people quite often, and I supposed—

Q. Did you suppose Mr. Loewe sent them— A. I said people send them to the labor people quite often, and I supposed he got into the habit with the rest of them. 5955

Q. You supposed Mr. Loewe was sending that out without any cause of provocation? A. I didn't think it was serious at all.

Q. You knew at that time the men had left the Loewe factory, didn't you? A. I knew the men were out of the Loewe factory, yes.

Q. Didn't you know there was general talk about the effort to unionize the factory? A. No, I don't.

Q. And during all of this time in 1902 you never heard any talk as to why the men had left the Loewe factory? A. No, I did not. 5956

Q. Now, you received this notice? A. Yes.

Q. In an envelope addressed to you, didn't you? A. Yes.

Q. Then I would like to know what you think of this:

"Notice is hereby given that the undersigned will hold each and all the members of all labor unions, individ-

5957 ually and collectively responsible for all damages, which we may sustain in our property or business by reason of the unlawful acts of such labor unions or any of the officers or agents thereof."

Dated at Danbury, Conn., August 23rd, 1902. D. E. Loewe & Co.

The foregoing notice is issued in order that all members of unions may be informed as to their individual liability for the unlawful acts of the unions, or officers or agents of the unions, whether said acts meet with the approval or disapproval of the individual members of the

5958 unions. D. E. Loewe & Co."

A. That is what I took it for, for physical injury to the employes of that factory, anybody that would go in there, that is what I thought that meant.

Q. Any physical injury to the employes? A. Any physical injury to any of the men that worked in the Loewe factory, that is that I thought it meant.

Q. How did you explain it being sent to you? A. I didn't know. The man who sent it perhaps could explain that.

Q. Didn't you read this article in the Danbury

5959 News, or the Evening News:

"After Loewe Factory.

The Hatters Union will attempt to unionize this plant.

The United Hatters of North America which has recently unionized several of the largest hat factories in the country, has transferred its operations to Danbury, and announces its intentions of unionizing the factory of D. E. Loewe & Co. President Moffitt Vice President Lawlor and Treasurer Maher went to the factory and or-

5960 dered all the union men employed there to quit work. The men did immediately as instructed, and the factory is now short handed in all departments."

Didn't you read that? A. No, I did not.

Q. Didn't you read an article of July 26th, in the July 26th issue of the Danbury Evening News entitled:

"The Loewe Matter.

The United Hatters induce non union men to leave the plant." A. I didn't know there was any non union men taken out of the shop until one day this week I heard it in the factory.

Q. You never read anything about the Loewe matters in the Danbury News? A. No. 5961

Q. You are a regular reader of it? A. Not a regular reader of it, I read the Danbury News.

Q. You talked with other men concerning the strike in Loewe's factory? A. Well?

Q. You talked with other journeymen concerning the Loewe strike? A. Why, I talked about Loewe's men being out, as I was told on the street, but I held no conversation with any body for the reason of them going out, or staying out.

Q. And you discussed with men on the street, that matter? A. I didn't discuss it with any man on the street 5962

Q. I understood you to say that in your talk with the men on the street as to the fact that the men were out— A. That they were out, yes, as I had heard.

Q. But nothing was said whatsoever by any of those people that you talked with, as to the reason why the men were out? A. No.

Q. Didn't you know that your national officers were in Danbury at that time? A. I did not.

Q. And didn't you know shortly after that they were in Danbury with their headquarters at the Groveland? A. No, I did not. 5963

Q. You did not know they came to Danbury to take charge of the Loewe matter? A. I did not, no.

Q. Not only know it, but you said you didn't hear it or read about it? A. I didn't hear of it or read about it.

Q. Did you receive a circular from the Union relative to the employment of counsel? A. I did.

Q. Did you sign it? A. I did, yes.

Q. What was it, a letter addressed to you? 5964

By the Court:

Q. Did you hear the letter that he read to the last witness? A. I did, yes.

Q. Was that the letter? A. Well, it don't sound to me as if it was as much as that. It perhaps meant the same, but it didn't seem to be as long a letter, there didn't seem to be as much to it, perhaps it meant about the same.

5965 By Mr. Merritt:

Q. I will ask you this, didn't you receive a letter signed by Mr. Connelly and enclosed with it another letter addressed to Mr. Connolley for you to sign? A. I did, yes.

Q. Was there also enclosed a stamped envelope addressed to Mr. Connolley for you to enclose your letter in? A. Well, that I wouldn't swear to, but I returned it signed.

Q. You returned signed a letter addressed to Mr. Connolley? A. Yes.

5966 Q. Authorizing the employment of counsel etc.? A. Yes, sir.

Q. And you think it is of the same general nature as what I have read, but you don't think it was the same thing that I have read? A. Well, I wouldn't say it was the same thing as you read.

Q. When this suit was started you continued a member paying dues? A. I did, yes.

Q. And made no protest or any effort to prevent the re-election of the same officers? A. I had no reason for it.

5967 Q. You were satisfied to stand on the record of the organization? A. I didn't know as they had done anything.

Q. Did you understand what was in the complaint? A. What complaint?

Q. That was served on you in this suit? A. Why, yes, some of it, some of it I didn't pay much attention to, I didn't think it was serious at the time because I hadn't done any thing, and I didn't know why I should be brought into this suit.

Q. You knew that your organization was charged with the boycotting of the plant? A. I never gave it much attention.

5968 Q. Didn't you know that? A. Not that I was charged with it.

Q. Didn't you know that your organization was charged with boycotting in that plant? A. Yes, I knew that.

Q. You did know it? A. Yes.

Q. You knew it at the time? A. I knew it at the time after I was served with those papers, yes.

Q. And yet you didn't see any reason whatsoever, why you should not go on in the same way, and why you should not go on and re-elect the same officers? A. Well, by serving

those papers on me, anything that these people did if that is the thing that these people did,—because I had no knowledge of it. 5969

Q. Did you ever make an effort to investigate? A. How do you mean investigate?

Q. To find out if it was true or not? A. No, I did not.

Q. Didn't you inquire, or did you connect it in your own mind with this warning? A. No, I did not, not the attachment, I didn't think that is what it meant.

Q. You didn't connect this warning in your own mind in any way with the suit? A. Oh I did after the papers were served on me, yes.

Q. And you were ready to stand on the record of your organization? 5970

Q. You recall that the assessments were increased at the time of Berg trouble in 1900? A. I do, yes.

Q. Do you recall why the explanation for the increase?

A. Yes, I do.

Q. Don't you remember then that the object of that assessment as stated to the members was to send agents on the road to boycott the Berg hat? A. No I didn't understand it that way.

Q. Where did you receive your information from? A. Why general talk, the insurance feature of it is the only time I remember of any assessment being increased. 5971

Q. You said you remembered the assessment being increased in 1900 on account of the Berg matter? A. Did I say 1900?

Q. Or at the time of the Berg matter? A. I don't remember testifying that the assessment was increased in 1900.

Q. Let us see what you will testify to. You remember the assessments being increased in 1900 at the time of the Berg trouble? A. Well, I remember the assessment being increased, but it was on account of the insurance part of the society, that is what I referred to, and that is the only increase I know anything of for the purpose of the insurance. 5972

Q. When was that? A. I couldn't recall the time either.

Q. Could you tell whether it was 1900? A. No, I couldn't say whether it was 1900.

Q. Will you say whether it was before or after? A. I think it was after, some time after.

5973 Q. You don't recall any other increase in the assessment at the time? A. No.

Q. Is that correct? A. As that says 1% nationally, and 25 a month locally, and that was in vogue for quite a while and then they made it 1% locally and 1% nationally and threw off the 25 percent.

Q. Don't you remember of a 2c assessment nationally? A. Why, I am telling you about the insurance feature of it at the time I am sure they increased it, about 2%. They increased from $100 to $300 insurance benefits, and they also increased the percentage at that time.

5974 Q. Then as I understand your testimony, you have no recollection whatsoever of any increase of assessment in 1900 for the purpose of the Berg fight? A. That is the way I answer it, I have no recollection.

Q. Which was a 2% assessment, a special assessment? A. I have no recollection of that.

Court adjourned until 9:30 A. M., Thursday.

Thursday, September 26th, 1912.

Morning Session, 10:00 A. M.

Witness,

5975 ALPHONSE BRESSON,

Sworn by Mr. Carroll.

EXAMINED

By Mr. Beach:

Q. B-r-e-s-s-o-n? A. Correct.

Q. Where do you live, Mr. Bresson? A. In Danbury, Conn.

Q. And how old are you? A. Forty-four.

Q. How long have you lived there? A. Since 1884.

5976 Q. Are you a man of family with children? A. Yes, I am.

Q. Did you in 1902 and '03 belong to any association of hatters? A. Yes, I did.

Q. What? A. Finishers' Association.

Q. Finishers' Association of Danbury? A. Of Danbury.

Q. How long had you belonged to that Association prior to 1903? A. Since 1887.

Q. How long have you lived in Danbury? A. Since 1884. 5977

Q. Did you ever work for Mr. Loewe? A. No.

The Court:

Mr. Beach, you haven't fixed that matter that you spoke to me about.

Mr. Beach:

Oh, that is true; shall I do it now?

The Court:

Yes.

Mr. Beach:

After the close of the examination of Patrick McCarthy, please insert this, by counsel for defendants: "While we understand that our exception to questions relative to the continued payment of dues and the failure to inquire into the facts alleged in the complaint, or to protest against the re-election of officers, is a continuing exception, we desire, in order to get it on the record, to renew it upon these questions. 5978

The Court:

That may be so understood: And it is to be also understood that it is admitted solely as a matter of cross examination bearing upon the truthfulness of the testimony in chief.

Q. Now, Mr. Bresson, we got as far as that you had been living in Danbury twenty-eight years; never worked for Mr. Loewe. Were you ever a delegate to any convention of the United Hatters? A. No, I wasn't. 5979

Q. Or to any Convention of the American Federation of Labor? A. None whatever.

Q. Were you ever, prior to 1903, an officer in your local union? A. Never held an office.

Q. Or in the United Hatters of North America? A. No.

Q. Or in any other labor organization? A. No.

Q. Were you a regular reader of the Journal of the United Hatters? A. No, not what you call a regular reader. 5980

Q. Where were you working from 1900 to 1903? A. Oh, I was working at John W. Green's factory.

Q. Was that Journal distributed there? A. It is there now?

Q. In the factory at that time? A. What is the question?

Q. Did you see the Journal of the United Hatters in the factory at that time? A. No, I didn't see that at that time.

5981 Q. You didn't see it in that shop at that time? A. No; very seldom saw it in that shop.

Q. How often did you read it or read in it? A. Very little.

Q. Do you remember reading in that Journal prior to 1903, or October, 1903, anything about the firm of Berg & Co.? A. No, I don't.

Q. Do you remember reading in that Journal prior to October, 1903, anything about the firm of H. H. Roelofs & Co.? A. I didn't read it.

5982 Q. Did you read or know the Federationist? A. No, not until it was brought up here a few days ago.

Q. When did you first learn of any trouble in the factory of the plaintiff, D. E. Loewe & Co.? A. It was the day after the men was called out.

Q. Prior to that did you know that there was to be any trouble there? A. No, none whatever.

Q. And after you first learned of any trouble there, did you or not know that the agents or officers of the United Hatters were following up Mr. Loewe's goods or customers in other states in their sale? A. No, I didn't; no.

5983 Q. Did you prior to October, 1903, know that the officers and agents of the United Hatters of North America had followed up the goods or customers of Berg & Co.? A. No, I never knew that.

Q. In the sale of their goods? A. I never knew that.

Q. I ask the same question in regard to Roelofs & Co.? A. No.

Q. Or of any other manufacturer? A. No.

Q. Did you ever knowingly enter into any conspiracy to restrain the plaintiff's trade and commerce? A. I never did.

5984 Q. Or to restrain the trade and commerce of any other manufacturer? A. None whatever.

Mr. Beach:

That is all.

CROSS EXAMINATION

By Mr. Merritt:

Q. In 1903 you were working in the factory of John W. Green & Son; how long had you been working there, Mr. Bresson? A. Well, I worked there about seven years.

Q. Seven years prior to that time? A. No, about five years prior to that time.

Q. Then, generally speaking you were working in that factory from 1898 to 1903? A. Somewhere near there. 5985

Q. That was a union factory? A. It was.

Q. And in the room where you worked there were a great many other union finishers, were there not? A. Quite a large shop's crew there.

Q. About how many? A. Why in that room there was fifty men.

Q. And they were all members of this same hat finishers' organization that you were a member of? A. Yes, sir.

Q. And all members of the United Hatters—Answer so the stenographer can hear you? A. Yes—beg pardon. 5986

Q. I understood you to state that from time to time you had seen copies of the Journal at that factory? A. Yes.

Q. You know what we mean by the Journal, don't you? A. I do.

Q. (Showing witness book.) You recognize that as the— A. That is the title page.

Q. Yes; and were they distributed in the room where you worked? A. Yes, at times they were.

Q. Lying around the room? A. What is that?

Q. Were they seen lying around the room from day to day? A. Well, for a while they were, yes; I guess some of the members took them home, like that. 5987

Q. Well, you knew that was the Journal of your organization, didn't you? A. Oh, yes.

Q. And you knew, did you not, or assumed that it was the Journal by which the members were informed of the activities of the organization? A. Yes.

Q. So you knew that if you wanted to know what your officers were doing, or what your agents were doing, all you had to do was to open that cover? A. Yes, sir; of that book.

Q. Yes; and for some reason or other you refrained from opening that book and attempting to learn anything about what your organization was doing? A. Oh, I looked into it once in a while. 5988

Q. You did look into it occasionally? A. Yes.

Q. And read the reports of officers? A. Yes, some of them.

Q. During this same period that you were working in the Green factory? A. Yes, when I worked in the Green factory.

5989 Q. And did you read the reports of any of the agents? A. No, I didn't.

Q. You knew you had agents on the road, didn't you? A. Yes.

Q. And you knew their reports were in there, didn't you? A. Yes.

Q. And for some reason or other you refrained from reading the reports of the agents, either because you didn't care to take the trouble, or because you didn't want to know? A. Well, I really wasn't concerned in it a great deal, so I wasn't interested.

5990 Q. Did you ever see any of these convention proceedings? A. No.

Q. Never saw them left around the factory where you worked? A. No.

Q. Did you ever go to the headquarters of the organization in Danbury? A. In Danbury, yes.

Q. Where was the office at that time, Mr. Bresson? A. It has been changed around so at times that I couldn't recall exactly at that time.

Q. Now take a member like yourself, what occasion did you have to go to the office? A. Oh, to see about the reg-

5991 istering of boys, or my boy particularly.

Q. Well? A. And to sign an application for, or an application blank for somebody that wanted to join the union or something like that.

Q. I see; did you ever see any of these Convention Proceedings at the office of the Union? A. No.

Q. You knew there were such proceedings printed, didn't you? A. I am sure I couldn't tell you.

Q. Were you a regular reader of the Danbury News? A. No, not a regular reader; I glance over it occasionally.

5992 Q. Let me see if I understand what you mean. Of course, I don't suppose for a moment that every man reads every single word, including the advertisements, but you usually read it, or parts of it? A. Yes.

Q. Did it regularly come to your house? A. Yes, I was a regular subscriber to it.

Q. And usually you read it, or was it read to you by some member of your family? A. It was never read to me. I glanced over it when I wanted to find any information or anything like that.

Q. And so whatever information you did get from it you got by reading yourself? A. Yes. 5993

Q. Now, how large a town is Danbury, approximately? A. Twenty-three thousand; twenty-four.

Q. Well, how large was it in 1903; the city was only about 16,000 wasn't it? A. It did decrease a whole lot at that time.

Q. Now the principal industry is hatting, isn't it? A. That is the important industry.

Q. Well, there is no other industry of any importance compared with hatting, is there? A. No; no.

Q. And are there something like thirty factories there? A. In that neighborhood, yes. 5994

Q. Bethel is two or three miles from Danbury? A. About three miles.

Q. Connected by trolley? A. By trolley.

Q. And there is no industry in Bethel but hatting is there? A. That is all.

Q. And the Bethel manufacturers are union, aren't they? A. I believe so.

Q. And all but two in Danbury are union, aren't they? A. Two that I recall now; yes, I think that is true.

Q. And the Hatters' Union is a very important affair there, isn't it? A. Yes, it is. 5995

Q. Matters relating to the Hatters' Union are matters of great interest and importance? A. Yes.

Q. In fact, there are something like three thousand members, aren't there in Danbury and Bethel included? A. There is less than 3,000, I think.

Mr. Merritt:

Well, I am just taking Danbury and Bethel. Pretty near three thousand; something like 1500 members in your own association? A. About 1800 I believe, Makers and Finishers.

5996

Q. Oh, Makers and Finishers; aren't you in error about that; you mean there are only nine hundred members in your finishers organization? A. About that.

Q. Was that true in 1902 and '03? A. I think that is, about, but I wouldn't be positive about that.

Q. As I understand you matters relating to the union are matters of great importance and interest to Bethel and Danbury because of the importance of the industry and be-

5997 cause of the large number of people that are members? A. Yes.

Q. And events of the Hatters Union world are talked about a great deal, or weren't they in 1902 and 1903? A. They were, yes; they were quite a good deal.

Q. Then how is it, Mr. Bresson, that you can come here and testify, if this is so, that these matters are talked about generally, and are matters of general interest, that it should never become known to you that your union had been engaged in boycotting, when as a matter of fact, the records show, from 1898, down to 1903, that it was going on continuously? A.

5998 I never knew they were boycotting.

Q. Now did you ever read any articles in the Danbury News relative to the trade? A. Yes.

Q. Did you read any other paper besides the Danbury News? A. Once in a while I read the morning Journal. New York paper.

Q. No other Danbury paper, is there? A. No.

Q. You knew it was a common thing for organized labor to engage in boycotts, didn't you? A. No, not in boycotts, I didn't.

5999 Q. You didn't know that organized labor generally was being criticized for indulging in boycotts from time to time? A. Oh, I knew they were having trouble off and on.

Q. Well, on account of boycotts? A. I never knew they were boycotting though.

Q. I am talking about organized labor generally; you knew now that organized labor generally had been engaged in boycotting, or was being criticized for being engaged in boycotting? A. No.

Q. Perhaps I may be wrong in this statement; I think you stated that you had read the reports of officers occasionally? A. Some of their reports; yes.

6000 Q. And the reports of any of the agents? A. No, not of the agents.

Q. Although you knew they were there? A. Yes.

Q. Well, now let me see; look at some of these reports; now there on the very first page, February 1903, of the Journal, is the President's report; now that is the time when you were working for Mr. Green? A. Yes.

Q. And at times the President's report to the officers and members of the United Hatters of North America. Let me see if you have read any of this as far as you recall: "Gen-

tlemen: In presenting to you my report of the work of our 6001
organization for the past six months, I desire to briefly state that in the soft hat districts work has been exceptionally good and from what we can learn it will remain for some time to come. The earning power of our members since my last report shows a very substantial increase and while our members in some of the districts have not reached the three dollar a day average there appears to be very little or no dissatisfaction. We have unionized two factories: T. C. Millard & Co. of Danbury, Conn., and Sykes & Co. of Newark." Will you state whether you read that? A. No, I didn't read that.

Q. Well, have you any way to guide me to the report 6002
which you did read? A. It is quite a ways back; of course, it wasn't any matter of interest anyway, and I couldn't positively tell you what report it was.

Q. Yes; well it was when the Journal was in this form, wasn't it? A. Yes.

Q. Do you know whether it was a report of the President or Secretary or Treasurer, or what it was? A. Report of some committee, I believe.

Q. The report of some committee? A. Yes.

Q. Well, didn't I understand you to state that you had read the reports of officers? A. No; no, I didn't read the 6003
report of officers.

Q. You never read the reports of officers; you knew they were in there, of course? A. Sure.

Q. Well, now, don't you remember in 1903, seeing an item of news in the Danbury News with large headlines: "President Moffitt's address"? A. No, I didn't.

Q. You don't remember seeing that at all? A. No.

Q. Don't you remember seeing an item of news in the Danbury News "Hatters spend $30,000 advertising label"? A. I didn't see that.

Q. You didn't see that? A. No. 6004

Q. Don't you remember seeing an item of news in the Danbury News in 1903, concerning H. H. Roelofs? A. No.

Q. Didn't you ever read that the Hatters' organization had been sued by H. H. Roelofs? A. No.

Q. Never knew that until this suit was started? A. Never read it.

Q. Well, did you know it? A. Yes.

Q. You had heard about it from other members of the trade? A. Yes; shop men working in the shop.

56005 Q. And didn't you understand that that suit had been brought on account of alleged boycotting? A. Why it was never discussed; simply mentioned, that is all.

Q. Well, you inferred did you not, that the suit was brought because of the acts of your organization? A. Yes.

Q. And didn't you infer that those acts included boycotting? A. No, I didn't know that.

Q. Well, what would you think that this firm would be suing the Hatters' Organization for? A. Well, I knew they was having trouble; I didn't know in what way or how it was.

56006 Q. Well, you knew they were trying to unionize the plant, didn't you? A. No, I didn't know that.

Q. Never knew that in any way? A. No.

Q. And you never stopped to think in any way was to what your organization was being sued for by Henry H. Roelofs? A. No.

Q. Didn't give the matter any thought? A. Not any.

Q. And you never knew that there was a campaign on foot to unionize the Roelofs concern? A. No.

Q. Even after it was unionized? A. I didn't know hardly anything about the Roelofs; simply they had trouble, that is all.

56007 Q. How about the Berg concern? A. I knew—I didn't know anything only just about the same as the Roelofs case.

Q. You knew they had trouble? A. Yes, sir.

Q. Didn't you know that that trouble had grown out of an attempt to unionize the plant? A. No.

Q. Didn't you know that your organization had been engaged in unionizing a large number of factories? A. Yes, somewhat.

Q. Didn't you know that Berg and Roelofs were among that number? A. No.

56008 Q. Did you hear the names of the other concerns that had been unionized? A. No, I didn't.

Q. Well, now, did you attend any meeting in 1900 and 1903? A. Yes, I think I did.

Q. And did you vote for delegates to the Convention of the United Hatters? A. No, I didn't; not at the meetings that I attended.

Q. You never did vote for any delegates to the convention of the United Hatters? A. No.

Q. Did you vote for delegates to the Convention of the American Federation of Labor? A. No

Q. Sure of that, are you? A. I am sure. 6009

Q. Never voted for any nominees for delegates to the American Federation of Labor? A. No. 7

Q. Now don't you recall in 1900 that the assessments of your union were increased in order to carry on the Berg fight? A. I knew they were increased.

Q. At that time? A. About that time, yes.

Q. Don't you know they were increased to carry on the Berg fight? A. It was never explained that way, I don't think; it was never explained what it was for.

Q. You mean it was never explained to you? A. To me.

6010

Q. You don't mean that it was explained to your meetings? A. I don't know anything about that. 8

Q. Well, let me see; I want to read you from two reports of your local made relative to these assessments, etc.; did you receive any other explanation concerning this assessment? A. No.

Q. You don't remember any explanation concerning it? A. No, I didn't get any.

Q. Do you mean that the entire membership of the United Hatters would pay an increased assessment without any explanation as to what it was made for? A. I don't know about the entire membership. 6011

Q. Well, as far as you were concerned, that was the situation? A. As far as I was concerned.

Q. The shop steward came to you and said the assessment had been increased and you paid without asking the reason why? A. That is all. Yes.

Q. And I take it you never showed any interest as to the way in which your money was being spent? A. Not a great deal.

Q. Weren't you interested in knowing whether it was being spent for wrongful or proper purposes? A. I never had any idea it was spent wrongfully. 6012

Q. Well, now I will put these minutes to you and see if they don't stir up some recollection back in your brain. This is a meeting held in the City Hall, February 7th, 1900: "Mr. Daniel Brady;" did you ever hear of Mr. Brady? A. No.

Q. Well, now let's see whether you did or not "of Orange, N. J., addressed the meeting on the strike in Berg & Co. He said in part that he was here in the first place to thank the Hat Finishers Association of Danbury for their

6013 grand assistance during the trouble with Berg & Co. Another reason he was here to give the hatters of Danbury some information regarding the strike, and to tell you what was being done with their money. He said that when they entered the strike it was the intention to force Berg & Co. fair, and from the evidence he had received when he left Orange, he was convinced that they were right, and Berg & Co. will be forced to make their factory fair or go out of business. There are six men on the road working on the Berg & Co. hats"—and then I skipped part of it as to the demoralized conditions in the factory, etc., and that the hats were coming back like 6014 an army of ants. Motion to give Mr. Brady a vote of thanks for his trouble in coming to Danbury and the information he gave us." The going on to the minutes of a meeting held just a few months after that on April 11th, 1900. "Mr. Daniel McGrath, who was one of the agents on the road advertising label in the Berg affair gave quite a lengthy statement of his experience and success while on the road. Mr. James P. Maher, National Treasurer, also made a statement of affairs as they existed in Orange and in the Philadelphia case. Motion that it is the sense of this meeting that we uphold the national officers in the stand that they have taken and that we keep up 6015 the two per cent. assessment. Carried." Now doesn't that bring anything back to your mind? A. I didn't attend those meetings. I don't remember hearing that said.

Q. Well, does that bring anything back to your mind? A. No.

Q. Never heard anything about that? A. Not that. No.

Q. Now how was notice given of meetings in 1900 to 1903? A. How was notices given?

Q. Yes? A. Why they were written out and placed 6016 in the shops.

Q. Sometimes printed in the Danbury News, too, weren't they? A. Sometimes they were.

Q. And you always had notice of those meetings? A. Always had notice; yes, posted in the shop.

Q. Now weren't you under obligation to attend meetings? A. No.

Q. Wasn't there a fine for non attendance? A. There was for a while.

Q. When was that? A. Well, that was after this—1903.

Q. There was no fine for non attendance prior to 1903? A. I don't think they were; I wouldn't be positive about it. 6017

Q. I take it you were willing to leave the management of your organization to those who would take the trouble to attend meetings? A. Why, yes.

Q. Now did you receive one of these warnings, "Plaintiff's Exhibit 86"? A. No, I didn't receive one of those warnings.

Q. Sure of that?

Q. You stated that you were sure you didn't receive one of these? A. I didn't receive one of those.

Q. And I call your attention to "Plaintiff's Exhibit 112"; your name in this 1902 Danbury Directory appears as "Alphonse Bresson, 13 Griffing Avenue"? A. Yes, that is right. 6018

Q. Was that right in 1902? A. I resided there since I have been in Danbury.

Q. Were you in town at that time—in 1902? A. I think so, yes.

Q. Did you receive any notice of meeting concerning the election of delegates to the American Federation of Labor? A. No.

Q. Weren't those notices posted in the factory? A. Oh they were in the factory; I thought you mean to my house. 6019

Q. Notices of that kind were posted in the factory? A. Yes.

Q. Did you ever see any of those warnings in the Danbury News where they were advertised for a week? A. No, I didn't see them.

Q. Did you ever talk with any of your fellow workmen to whom this notice had been sent concerning that notice or warning? A. No.

Q. Never heard it mentioned? A. Not in the factory.

Q. Or elsewhere at that time? A. Nowhere.

Q. Did you read in the Danbury News to the effect that the men had been called out of the Loewe factory? A. No, I didn't read that. 6020

Q. Or read anything about the Loewe strike in the Danbury News? A. No.

Q. Sure of that? A. Very sure.

Q. But you took the Danbury News regularly at your house? A. Yes.

Q. Well, now I will ask you, Mr. Bresson, if in the face of the evidence as to the publication of these matters in the

6021 Danbury News, at the local meetings, in the Journals of the United Hatters, so that much of the membership at least must have known about them—in the face of your evidence that you worked with a large number of members, you are willing to testify that you never heard by hearsay or rumor that your organization was engaged in boycotting or had been accused of being engaged in boycotting; or whether you mean to testify that you simply do not recall now that you ever heard of it? A. I heard that they had trouble with D. E. Loewe after the men had been called out; that is the only part that I ever heard.

6022 Q. You are willing to testify positively that although it is a matter of fourteen years or more ago that you never heard in any way by reading or conversation with any of your fellow workmen in this hatting organization in Danbury that the organization was engaged in boycotting or accused of boycotting? A. No, I never heard that.

Q. You are willing to testify positively to that fact are you? A. Yes.

Q. You did hear that you had agents on the road? A. Yes.

6023 Q. And you heard that from your fellow workmen, or did you read about it? A. I heard that from the shop mates.

Q. So that at times you did discuss the affairs of your organization with your fellow workmen? A. Never discussed them; simply mentioned them, that is all.

Q. Well, you talked about that? A. Very little.

Q. But you did some. Now I will ask you, after you were sued in this case whether you continued a member without protest and whether you made any effort to prevent the re-election of the same officers? A. I made no protest; no.

Q. You continued a member, paying dues? A. I did.

Q. You made no effort to prevent the re-election of the same officers? A. No.

6024 Q. Did you make any effort to prevent the organization from continuing to do the things that were alleged in the complaint? A. I did not.

Q. Now is your recollection—

Mr. Beach:

I think I ought to renew an exception if your Honor please.

Mr. Merritt:

Well, I understand that your objection runs to all these matters that raise any question of that kind.

Mr. Beach:

6025 I think it is pretty manifest what the intention of examining counsel is.

Mr. Merritt:

Why, it is perfectly manifest what it is. The object of counsel is to show that it is inconceivable that these men should never have know the character of their organization prior to the suit, and that their conduct immediately subsequent to the suit is very important as showing that they did know at all times, both before and after suit, that their organization was engaged in boycotting.

Mr. Beach:

6026 That is precisely the ground upon which we object to this testimony, if Your Honor please.

Mr. Merritt:

We claim that it is simply cross examination.

The Court:

Well, if it is anything that comes under the exception, you needn't state it, but if it is something outside of that you might renew it.

Q. Is your memory pretty clear as to things that happened ten years ago? A. No, it is not.

6027 Q. Well, isn't it possible you may be mistaken then, and that you may have read of these matters or that they may have come to your attention through some of these numerous channels of information? A. I am pretty positive that I didn't read about them.

Q. Well, isn't it possible, in view of the fact that you say your memory is not very good ten years back, that they may have come to your attention, and that you didn't pay much attention to them and that you have forgotten them? A. I didn't read about those articles at all.

Q. You don't think it is possible you might be mistaken on that point? A. No, I don't.

6028 Q. Did you receive any letter concerning the employment of counsel? A. Yes, I did.

Q. You signed it and mailed it back? A. I did.

Q. You think you would recognize the letter if you heard it? A. Yes, I would. I heard you read it yesterday.

Q. Oh, that was the one I read yesterday? A. Yes.

Q. That is the one you received? A. That is the one I received.

Q. And the one that you signed and sent back I also read? A. Yes.

6029 Q. Well, now in regard to this warning which we claim we mailed to you at your address in 1902, taking your name and address from that directory, are you willing to testify positively that you never received it, although it is ten years ago? A. I didn't receive it. It may have been mailed possibly.

Q. Your expenses were paid by others to come here and testify at the last suit, were they not? A. Yes.

Q. From whom did you get the money? A. Our Secretary and Treasurer.

Q. Who is he? A. Mr. Shalvoy.

6030 Q. Did you go to his office? A. I did.

Q. Have you talked recently with anyone concerning your testimony in this case? A. No, none whatever.

Q. You haven't discussed with anyone before you went on the stand concerning the testimony you would give in this case? A. No. The President came to me in the shop and told me they wanted me to come up here to testify in this case.

Q. And you haven't discussed the matter with counsel or any of the other defendants? A. No.

The Court:

6031 You say you haven't discussed it with counsel; you mean you haven't talked with counsel about it? A. Yes, we had a little talk.

Mr. Mulholland:

You talked this matter over with me this morning, didn't you? A. Yes.

Mr. Mulholland:

That is all.

Witness excused.

Recess.

6032 Witness

NICHOLAS W. ALLEN,

sworn by Mr. Carroll:

The Clerk:

Your full name? A. Nicholas W. Allen.

EXAMINED

By Mr. Beach:

Q. Where do you live, Mr. Allen? A. 47 Washington Avenue, Danbury.

Q. Keep your voice up so that all the gentlemen on the jury can hear what you say. How long have you lived in Danbury? A. Thirty-two years, I guess; about. 6033

Q. And your age? A. Fifty-two.

Q. Did you ever work for Mr. Loewe? A. No, sir.

Q. Have you ever been a delegate to any convention prior to October, 1903? A. I was a delegate to the Connecticut Federation some time about fifteen or sixteen years ago; I don't know what date or what year it was.

Q. That was the State Federation? A. Yes, state.

Q. About how long ago? A. Oh, it must be fourteen or fifteen years ago, when it was held; in Norwich anyway, I don't know when that was. 6034

Q. Fourteen or fifteen years ago in Norwich? A. Norwich.

Q. Well, with that exception have you been a delegate to any convention? A. Not any since then; no.

Q. Were you before that time ever a delegate to a convention of the United Hatters of North America? A. No, sir.

Q. Or of the American Federation of Labor? A. No, sir.

Q. Have you ever held office in your local union? A. No, sir. 6035

Q. By the way, were you a finisher or maker? A. Finisher is my trade.

Q. You belong to the Finishers' Union of Danbury? A. Yes, sir.

Q. Before October, 1903, were you or not a regular reader of the Journal of the United Hatters? A. I don't know as I ever read it.

Q. What was that answer, please? A. I don't think I ever read it.

Q. Where were you working in 1900 to 1903? A. Lee Hat Company—at the time I was attached, you mean? 6036

Q. Yes, and for three years before that? A. Oh, I couldn't tell you that. At the time the attachment was levied on me I worked in the Lee Hat Shop.

Q. Do you remember where you worked before that time, Mr. Allen? A. Why, I couldn't tell you. I was in several shops before that, and since, too.

Q. Were you working in Danbury along at that time? A. What year do you mean?

Q. Well, 1902? A. I think I was, yes. 1902?

6037 Q. Yes? A. Was that the time the attachment was put on? A. No, the attachment was put on in 1903? A. I was in Danbury then, in 1902, yes.

Q. Are you a reader of the American Federationist. The Journal published? A. I don't know as I never saw a copy of that.

Q. Do you remember when you first heard of any trouble or strike at the Loewe factory? A. The first that I knew about Loewe's factory was when the attachment was given to me in Lee's. The only thing I know about it was the sheriff come there and handed it to me.

6038 Q. You mean that you didn't know of any trouble at all at Loewe's until you were served with process in this case? A. I didn't.

Q. At that time what position did you hold in Mr. Lee's plant? A. I was foreman in the stiff department.

Q. Foreman of the stiff hatting department? A. Yes: finisher.

Q. Finishing department of stiff hats? A. Yes.

Q. Prior to October, 1903, did you know that the officers of the United Hatters of North America or the agents of that association had been following up the goods and

6039 customers of manufacturers in different states to prevent their sale? A. I didn't.

Q. Were you ever knowingly a party to any combination or conspiracy to restrain the trade of any manufacturer? A. No, sir.

Mr. Beach:

That is all.

CROSS EXAMINATION

By Mr. Merritt:

Q. How long did you work in Danbury prior to the time your property was attached? A. I worked in Danbury since 1880.

6040 Q. Continuously? A. Why, not continuously, but I lived in Danbury continuously since then.

Q. Where else have you worked? A. In Bethel; several times in Bethel.

Q. What is that? A. I worked in Bethel several times.

Q. That is you worked continuously in Danbury and Bethel since 1880? A. Yes, sir.

Q. Were you working in Danbury in 1900 and 1903? A. I think so; yes.

Q. You think you were working continuously in Dan- 6041
bury at that time? A. Yes.

Q. How long had you been working at the Lee factory when you were served with attachment papers? A. Why, not over a year, I don't believe; I couldn't tell you exactly, no.

Q. Well, approximately? A. About a year.

Q. And where were you working just prior to that? A. Prior to that time?

Q. Yes? A. The Tweedy plant I think; that is some time before I come to leave.

Q. You were at the Tweedy plant some time before you 6042
came to Lee's? A. Yes.

Q. You came directly from the Tweedy plant to Lee's? A. I don't think I did.

Q. I want to know where you worked prior to the time you went to Mr. Lee's? A. Well, the last time I worked before I went to Lee's was at Tweedy's—yes.

Mr. Beach:

Then there was some time when you didn't work—is that it—before you went to Lee's? A. No, sir.

Q. Is your mind clear just where you worked before you went to Lee's? A. I am pretty sure it was in Tweedy's 6043
I worked.

Q. And for a considerable period of time? A. Why, no; not the last time I was there. I wasn't there very long though; not over—I don't know—less than a year, I guess.

Q. What Tweedy was that? A. Edmund Tweedy.

Q. And you have been working at Mr. Lee's— A. Since he went out of business I worked at Mr. Lee's.

Q. And your recollection is that you were only working at Mr. Lee's about a year, was it, at the time the attachment papers were served? A. That is about all I guess. I don't know.

Q. Then according to your recollection Mr. Tweedy 6044
went out of business in 1902? A. I don't know the time he went out of business.

Q. Well, you left there when he went out of business, didn't you? A. I ain't sure about that either.

Q. But you are sure he had not gone out of business in 1902? A. What is that?

Q. You know he hadn't gone out of business in 1902, because you were working for him? A. I don't know that

6045 I was there in 1902. My recollection is I think I left Tweedy's and went down to Lee's.

Q. And your recollection was, as I understand it, that you had only been working at Lee's about a year when the attachment papers were served upon you in September, 1903? A. I don't know.

Q. Whether it was a year or more? A. Whether it was a year or more. It wasn't over two years anyway. I didn't put anything down on paper in that line.

Q. No, I am trying to get at your recollection? A. Oh.

6046 Q. You are not sure whether you worked at Lee's factory one or two years at the time the attachment papers were served on you? A. No, I am not sure.

Q. But you are sure it wasn't over two years? A. Yes, I am sure it wasn't over two. I don't think it was over two anyway.

Q. And the reason you came to Lee's was because the Tweedy factory went out of business? A. I couldn't tell you that, though I think they went out of business soon after anyway.

Q. The Lee factory was a union factory, was it not?

6047 A. Yes, sir; so was the Tweedy shop when I worked there.

Q. The Tweedy shop was a union factory when you worked there? A. Yes, sir.

Q. So you had been working continuously at a union factory for a number of years prior to the attachment? A. Why, yes; certainly.

Q. And I will ask you whether or not at that time you saw copies of the journal in the rooms where you were working? A. Yes, I have seen them passed around.

Q. Well, how were they passed around? A. Well, the Steward used to have some. I don't know as we passed them

6048 around very much.

Q. What did you mean when you said you saw them passing around? A. Why, they were there if you wanted to take them, that is all.

Q. You saw them lying about the room? A. Yes, sir.

Q. Were they scattered on different benches where the men were at work? A. Well, they were on the steward's bench anyway; I don't know whether there was any more than that.

Q. You understood they were there for the men who cared to read them? A. Sure.

Q. You understood that they were the journal of your organization? A. Yes, sir. 6048

Q. And you understood that the purpose of putting them there was to inform the men as to what the organization was doing? A. Very likely it was.

Q. That is the journal that you had in mind, isn't it (showing witness book)? A. I can't tell.

Q. Can't you tell whether that looks like the ones that you remember seeing—or I mean an issue of the same kind that you saw lying around the factory? A. I believe it was larger than that, to my mind; I don't know.

Q. According to your recollection, it was not like that? 6050
A. Well, I don't know whether it is or not; I wouldn't swear for that, you know.

Q. Yes. Now you saw it in the Lee Factory? A. I think so, yes.

Q. And you saw it in the Tweedy Factory? A. I couldn't tell you whether I saw it in the Tweedy factory or not.

Q. But you are sure you saw it in Mr. Lee's factory? A. I think I did, yes.

Q. You saw it from month to month at different times? A. I don't know how many times. I couldn't tell you.

Q. Well, at different times? A. Yes, sir.

Q. Over a period of a year or so you saw it there from 6051
time to time, didn't you? A. I didn't see it for a period of years, because it wasn't given out until a little later, to my knowledge.

Q. What is that? A. I didn't see it given out very often—how many years has it been in existence? A. I didn't know it was over a year or two.

Mr. Davenport:

1898.

Q. It was in existence from 1898 'till 1905; now the particular time I am asking you is the time you were at Lee's, 6052
which you said was a year or two, not over two years; didn't you see it put in there from time to time in the room where you were working? A. I couldn't tell you how many times I saw it out there.

Q. Well, you saw them more than once? A. Yes, more than once I saw them.

Q. And more than twice—you saw them a good many times, didn't you? A. I wouldn't say that I saw them a good many times; no.

6053 Q. You don't recall whether you saw them or not? A. No, I don't.

Q. I take it that although you knew it was there and was put there to inform the members as to what their officers were doing and how your money was being spent, you never took the trouble to look into it. A. I didn't. I didn't see very many of the other either that did.

Q. Are you speaking for yourself? A. Speaking for myself.

Q. You never looked into it? A. Never looked into that article at all.

6054 Q. Never looked into this Journal? A. No.

Q. You stated that you were a delegate to the Connecticut State Federation of Labor? A. Yes.

Q. For whom were you elected a delegate? A. Hat Finishers' Association.

Q. Oh, you went from the Hat Finishers Association and you think that was fifteen years ago? A. I think so—all of that, if not more.

Q. If not more; fifteen years ago would make it 1897—you think it was way back there, do you? A. Yes, further back than that.

6055 Q. What is that? A. Further back than that I think.

Q. Further back than 1897, according to your recollection? A. Yes.

Q. Where did you attend the convention; in Norwich? A. Yes.

Q. Don't you remember the convention taking up the question of a boycott? A. I don't.

Q. Not a boycott, of Mr. Loewe, or of any particular person, but discussing the question of the boycott? A. Not of their own.

6056 Q. You don't remember anything of that kind? A. Nothing about a boycott; no.

Q. Did you ever read the constitution of the Connecticut State Federation? A. I didn't.

Q. You don't know whether or not there is any provision in that for the conducting of boycotting? A. I don't.

Q. Were you ever a delegate to the Central Labor Union of Danbury? A. I think I was once.

Q. When? A. Oh, I don't know how long that is; probably twenty years ago.

Q. And elected by your Finishers' Union? A. Ap- 6057
pointed by them to go there.

Q. That is the only time you have ever been a delegate to the Danbury Central Labor Union? A. That is all.

Q. Didn't you know that the Danbury Central Labor had been from time to time engaged in conducting boycotts? A. I didn't.

Q. Didn't you know that they had been engaged in boycotting various plants in Danbury? A. I didn't.

Q. Didn't you ever hear that by rumor or hearsay? A. No, sir; I didn't know they were up to that kind of business.

Q. Didn't you ever hear in Danbury that representa- 6058
tives had been sent around to all the merchants there to insist that after a certain date they should never sell anything but union goods? A. No, I knew nothing about that.

Q. Never heard or read about it? A. I didn't read about it, no.

Q. What officers of the union did you know in 1902 and 1903? A. Oh, I couldn't tell you; I knew all the officers that was in there right along.

Q. You knew them? A. Sure.

Q. You knew Mr. Shalvoy? A. Yes.

Q. Knew him well? A. Sure. 6059

Q. And knew Mr. Connolley? A. Not very personally, no; he didn't belong to our association. He belonged to the makers.

Q. Yes, but I wanted to know if you knew him in connection with that association; now let me see who was President of your Association, Charles Barrett? A. At one time, yes.

Q. 1902 and '03 I am asking about? A. I couldn't tell you.

Q. It was Mr. Barrett? A. I couldn't tell who it was.

Q. You don't recall? A. No. 6060

Q. Now I want to read this report to you concerning the Central Labor union of Danbury, and it is taken from the American Federationist for April, 1897, and I want to see if you don't recall that. This suggests something to you? "Mr. Henry White, of the Garment Workers, reports that the Central Labor Union of Danbury, Conn., is resolved not to allow any goods that are non union to be sold within the precincts of the town. A careful canvass has been made and all present goods in the stores will be tagged so that after May 1st goods

6061 not bearing a label or a tag will be boycotted. Exception is made, of course to articles made by working people in trades where no organization exists. The dealers have all agreed to this proposition, and all of the working people of the town are organized." Now does that refresh your recollection? A. I never saw that before in my life.

Q. Never heard anything about that? A. No, sir; I would swear to that.

Q. Don't the Constitution of the Central Labor Union of Danbury provide for boycotting? A. I didn't never read it.

6062 Q. Never read the constitution? A. No, sir.

Q. Did you ever read the constitution of the United Hatters? A. Part of it, not all of it.

Q. You knew that it provided for membership in the American Federation of Labor, didn't you? A. I don't know whether it did or not; I never saw that if it did.

Q. You mean you don't recall now whether at that time it did or not. Now let me see; didn't you ever see this provision, "The delagates and alternates of A. F. of L. Convention from the United Hatters of North America shall be elected by referendum vote of the general membership; nominations 6063 to be filed with National Secretary not later than July 1st of each year, in order that election may take place in the month of August." And then going on and stating further about the election of delegates to the American Federation of Labor; didn't you ever hear of that? A. Why, I heard of it surely, but I never paid no attention to it.

Q. Then you knew your organization was connected with the American Federation of Labor? A. Why, sure.

Q. Didn't you know that the constitution of the American Federation of Labor provided for boycotting? A. I didn't.

6064 Q. Were you a reader of the Danbury News? A. Sometimes I looked it over; look at the news generally; never pay much attention to the local news.

Q. What is that? A. I don't read the local news very much; i. there is any political news in it I look it over.

Q. Well, now haven't you read items of news in the Danbury News which relate to your organization? A. Not that I know of; no.

Q. You don't recall having read anything in the Dan- 6065
bury News at any time relating to the United Hatters of North America? A. Why, not that I can relate; no.

Q. You are willing to testify that you didn't read anything are you? A. Tell me what it is and I will testify to it. If you will read it over, if I ever read it I will remember it; yes.

Q. Your memory is good enough for that, is it? A. Why, yes; if you read it over, if I read it I will tell you, or if I didn't read it I will tell you so.

Q. Yes, and you will undertake to testify as to whether, for instance, you read a certain article in 1900? A. Yes, 6066
sir; I will. If I read it I will tell you.

Q. But you don't know who your officers were in 1902? A. Why, I didn't keep date when they were in office; if I put it on a slip why I might have it to read.

Q. What is that? A. I say if I took note of it I could, I suppose.

Q. Well, did you know Mr. Charles Barrett in 1902 and 1903? A. Yes, I know Mr. Barrett.

Q. Did you know him personally? A. Yes, sir.

Q. Ever go to his home? A. No, sir.

Q. Ever go to the home of Mr. Shalvoy? A. No, sir; 6067
I never was in Mr. Shalvoy's home either.

Q. But you know them both personally? A. Yes, sir.

Q. Did you know Martin Lawlor? A. Yes, I know him personally.

Q. Do you know Mr. James P. Maher? A. Yes.

Q. And Mr. John Moffitt? A. Yes, sir; I know him; not acquainted with him though; I know him when I see him.

Q. The others you are acquainted with? A. Yes, I am acquainted with all the others.

Q. And you are willing to testify that you never heard that your organization was attempting to prevent the sale of 6068
goods of any manufacturer? A. I didn't.

Q. Let me ask you whether or not you will testify positively that you never heard of these matters, or whether you are testifying that you don't recall now having heard of them? A. I am testifying that I never heard of any hat shop being boycotted, or any man's product being boycotted.

Q. Or read about it? A. No read about it neither.

Q. And you are willing to swear that—going back to the early history of the United Hatters—nothing of this kind

6069 ever came to your attention from anything you read or from conversation with any workmen in the factory where you worked? A. Always understood that our agents were out to advertise the label, and nothing else. That is all I ever understood that agents were out for.

Q. And you are willing to swear positively that you never did hear of these matters, either from reading or conversation with journeymen? A. I would testify to that; yes.

6070 Q. Suppose I should show you Mr. Allen, that the Tweedy Hat Mfg. Co. went out of business long before the time that you have testified about, and your recollection on that point was shown to be absolutely erroneous, would you still want to testify positively that you never heard of any of these matters? A. I don't know what time they went out of business; I have been in the Tweedy plant twice; first I was there for three or four years; the last time I was there when Edmund took it back to himself again and was less than a year at it.

Q. And you testified that it was some time after you left the factory that they went out of business and that wasn't before 1901? A. Oh, I don't know what time it was.

6071 Q. But you testified, didn't you that you hadn't worked at Mr. Lee's more than two years prior to the commencement of this suit? A. I don't think I did; no.

Q. And that you worked at the Tweedy plant just before that? A. I think so, yes.

Q. And they went out of business right after you left there, or some time after it—that is right, isn't it? A. It is right as far as I recollect, yes.

6072 Q. Well now, I will read you an article in the Danbury News: "Advertising Hat Label. United Hatters have spent thirty thousand dollars in two years for that purpose"; that is the heading. Did you ever read anything like that in the Danbury News? A. No.

Q. Well, now there is an article here about the Roelofs suit; did you ever hear about the Roelofs suit? A. I didn't.

Q. It was in two successive papers—in more than that—you never saw the name of the Roelofs suit in the Danbury News? A. Not that I know of.

Q. Did you ever hear of the Roelofs suit? A. No, I never heard about the Roelofs suit; I heard about the Roelofs shop; that is all I know about Roelofs.

Q. But you never knew or heard that a suit had been brought against your organization by the firm of H. H. Roelofs & Co. of Philadelphia? A. I didn't. **6073**

Q. What do you know about the Roelofs shop? A. Nothing at all that I could tell you.

Q. Didn't you know your organization was engaged— A. (Interrupting.) There is such a shop is all I know about them.

Q. Didn't you know your organization had been engaged in a combination to unionize it? A. I didn't know anything about what they were doing.

Q. Didn't you hear your organization was? A. I didn't. **6074**

Q. Never did? A. No.

Q. Did you ever hear that your organization had been engaged in a combination to unionize the Berg Factory? A. I know nothing about the Berg factory at all.

Q. Did you ever know that your organization was engaged in trying to unionize various factories? A. Various factories?

Q. Yes? A. Why, not that I know of.

Q. You didn't know that; never heard it? A. They were always willing to take a shop if they could get it of course; I didn't know they were trying to get any. **6075**

Q. You didn't know that your organization was trying to unionize factories? A. I didn't.

Q. You didn't know that that was one of the duties of your officers? A. I don't know as it is.

Q. You didn't? Now let me show you the constitution of your own organization; I am reading from Article X, Section 6: "It shall be the special duty of the directors to look after all shops under our jurisdiction. They shall use all the means in their power to bring such shops into the trade; and they shall assist the local officers when trouble of a serious nature may occur in any of the districts." That is news to you is it? A. Why, I never read it, that's all. **6076**

Q. You never read your own constitution? A. No.

Q. Or your own by-laws? A. No, sir.

Q. And you never heard that before? A. Never heard it read out as you have now.

Q. Well, did you ever hear it read out in any way? A. No, I didn't.

6077 Q. You never knew or heard anyone say that it was one of the objects of your organization? A. No.

Q. And one of its practices to try to unionize plants? A. No, I didn't.

Q. Were you involved in the strike or lockout during 1893? A. I was out at that time, yes.

Q. Where did you go to work after that? A. I went to work to Lee's after that.

Q. Was that a union factory at that time? A. Yes.

6078 Q. Went a union factory as soon as it resumed work, did it not? A. It did.

Q. Now, didn't you know that after 1892 your officers had been engaged in a continuous campaign to bring factories into the union? A. I didn't.

Q. Didn't you ever see those circulars (showing same to witness)? A. No, it is the first one I think I ever saw.

Q. Never saw one of those? A. No.

Q. Did you ever attend a Hatters' Fair? A. Hatters' Fair?

Q. Yes? A. I don't know why, for I couldn't tell you.

6079 Q. You can't remember? A. No. I remember a Hatters' Fair. I don't think I was there. Never at the Hatters' Fair. I don't think I was there.

Q. You don't think you ever went to a Hatters' Fair? A. No.

Q. But you are not sure? A. Well, I am pretty sure I didn't go.

Q. Didn't you ever hear that a Hatters' Fair had been held and money raised, and seventy-five thousand circulars like that had been sent out from the money raised at that Fair in Danbury? A. I didn't hear it.

6080 Q. Don't you remember that the assessments of your organization were raised in 1900 on account of the Berg matter? A. The assessments were raised?

Q. Yes? A. I didn't know they were raised.

Q. You didn't know they were raised in 1900? A. I didn't.

Q. And if, as a matter of fact, they were raised, that has entirely been forgotten by you? A. Yes.

Q. You received notice of meetings didn't you? A. Why, posted up in the shop, yes.

Q. Also published in the Danbury News aren't they? A. I don't know, don't remember. **6081**

Q. You never saw any notices of meetings in the Danbury News? A. No.

Q. But you saw them in the shop? A. I saw them in the shop.

Q. You occasionally went to meetings? A. Very seldom.

Q. Did you go to any meetings from 1900 to 1903? A. Why, several; several during them times.

Q. Were you ever at any meeting where they elected delegates to the United Hatters' Convention? A. I guess I was to one; yes, the last one. **6082**

Q. Well, I mean— A. (Interrupting.) The last convention they had.

Q. Well, in 1903? A. No, I wasn't.

Q. Or 1900? A. No.

Q. Did you ever vote for any delegate to the American Federation of Labor? A. No.

Q. Never voted for them? A. No, I wasn't there to vote.

Q. Were you ever at any meeting where a delegate from the United Hatters Convention report as to what was going on or what had been done at the Convention? A. No. **6083**

Q. Didn't you ever hear Mr. Shalvoy, or Mr. Maher, or Mr. Barrett speak about any of those matters? A. I didn't attend the meetings. I have said that.

Q. No, but you knew them and talked with them; didn't you ever hear them speak about any of these matters? A. Talked with them? No I wasn't talking with them.

Q. Didn't they sometimes hold meetings for the purpose of hearing reports of delegates from the Convention? A. I didn't know they held any meetings, only the regular meetings.

6084

Q. Well, I take it you testify that you never read the convention proceedings; never looked inside them? A. Never looked inside them, no.

Q. Did you ever hear that organized labor was engaged in boycotting? A. I never heard that our organization was.

Q. Did you ever hear that other organizations were? A. Not that I know of, no.

Q. You knew that organized labor was engaged in boycotting or being accused of being engaged in boycotting? A.

6085 I don't know anything about any other organization; I know that our own wasn't, that's all.

Q. You don't mean you know yours wasn't do you? A. As far as I know, they wasn't.

Q. But you didn't know what your agents were doing because you didn't take the trouble to read the reports which were placed before you, did you? A. Well, the agents wasn't engaged—wasn't hired to boycott, was they?

Q. How do you know what they were hired for? A. Why, I understood they were hired to advertise the label.

Q. Where did you get that idea? A. That is what we **6086** all understood we were paying our dues for; was to advertise.

Q. What do you mean by understood? A. Why, it was never put up that they were to do any boycotting.

Q. And where did you get your information from? A. Where did I get it from?

Q. Yes; that is a question? A. Where did we get it from?

Q. Yes? Where did you get your information from as to what your agents were doing? A. Why, when I went to meetings, I heard what they were doing, didn't I?

Q. Oh, then you did hear it talked at the meetings as to **6087** what your agents were doing on the road? A. Yes, they were advertising goods.

Q. And that is the source of your information—what was said at the meetings, is it? A. Yes.

Q. And this matter was discussed at the meetings concerning the operations of the agents? A. I don't know what you are trying to get at.

Q. Why, my question is perfectly plain. A. All I ever heard the agents were doing was advertising the goods—advertising the label.

Q. And you heard that at meetings? A. Yes, that is **6088** all.

Q. So that whatever was reported at the meetings in that regard is what you have been informed about? A. That is all.

Q. How many meetings did you hear this discussed at? A. Oh, I couldn't tell how many.

Q. Who made the report concerning what the agents were doing? A. I don't know that either.

Q. You don't recall? A. No.

Q. How long ago was it that you went to this meeting and heard about the agents advertising on the road? A. Oh, several years ago. 6089

Q. But you don't recall who made the report? A. No, I don't know who made the report.

Q. Well, your memory is perfectly clear that you never heard anything about your organization being engaged in any act of boycotting? A. No, sir; I never did.

Q. Didn't you understand that the agents were on the road in order to make factories go union? A. No.

Q. Did you receive one of these warnings, sent out by Mr. Loewe? A. I didn't. 6090

Q. Now, I call your attention to an entry in the Danbury Directory for 1902 which was used in mailing these notices; your name appears there as Nicholas W. Allen, 47 Washington Avenue? A. I never saw that notice before.

Q. Is that right? A. That is right.

Q. That was your address in 1902? A. Yes, sir.

Q. Forty-seven Washington? A. That is right; that is right.

Q. Well, now, didn't you hear anyone talk about those notices? A. I didn't hear anything about them notices 'till I was here two years ago or over. 6091

Q. Did you read the article in the Danbury News concerning the unionization of the Loewe Factory? A. I didn't.

Q. Sure of that, are you? A. Yes, I am sure.

Q. You never read this article headed "After Loewe factory. The United Hatters will attempt to unionize this plant," and that the men would be called out? A. I didn't. I answered that a dozen times.

Q. Yes. "Danbury Evening News, for July 25th, 1902. "After Loewe Factory. The Hatters' Union will attempt to unionize this plant. The United Hatters of North America which has recently unionized several of the largest hat factories in the country, has transferred its operations to Danbury, and announces its intention of unionizing the factory of D. E. Loewe & Co. President Moffitt, Vice-President Lawlor and Treasurer Maher went to the factory and ordered all of the union men employed there to quit work. The men did immediately as instructed and the factory is now short handed in all departments." Then I read the Danbury Evening News for July 26, 1902: 6092

6093 "The Loewe Matter. The United Hatters induced non union men to leave the plant.

"No agreement regarding the unionizing of the factory of D. E. Loewe & Co. has yet been arrived at between the firm and the United Hatters of North America. The Hatters' Union is determined to unionize the factory, and the firm announces that it will continue to do business as before.

"Yesterday the officers of the Hatters' Union removed all of the union men from the factory, and several of the non-union operatives. Today the officers went further and induced all of the non-union men to leave. The officers declined 6094 to state under what conditions the men were induced to stop work. Today there are no men working in the factory." Did you read either of those? A. I didn't read either of those items.

Q. Did you hear that the men had been called out of the Loewe factory at the time they were called out? A. I didn't.

Q. You didn't hear anything about it until the commencement of the suit? A. No.

Q. What did you do with this warning when you received it? A. I didn't get it.

6095 Q. Excuse me, I forget you testified you didn't. How many men worked with you in the Lee Factory? A. About thirty, thirty-five or forty.

Q. You never heard any of them mention that warning in any way? A. I wasn't where I heard them talking about it; I was in a different part of the shop to where the men was.

Q. Didn't any of the men work with you in the same room with you? A. The same room; they were in the other end of it. I was at the further end.

Q. Didn't you ever converse with any of the men in the room? A. Not on any subject of that kind, no.

6096 Q. You did converse with them sometimes? A. I didn't on anything like that.

Q. On anything? A. No, not unless on the work; that is all.

Q. You never talked with them about anything except work they were doing there in the factory? A. That was all I had to do there.

Q. Didn't you on the streets there in Danbury, or anywhere hear anything from any of the hatters in Danbury concerning those notices and the publication of them in the paper?

A. I didn't. I wasn't on the street or around in them times. I went home. I was through. 6097

Q. Now after you were sued you continued a member, did you, of the organization? A. Certainly I did.

Q. And continued paying dues? A. Yes, sir; if I continued to work I had to pay dues, didn't I?

Q. That is you had to continue a member of the union in order to work at your trade and earn your living at that trade? A. Yes, sir.

Mr. Davenport:

Is that true now?

Q. Oh, we don't want that—all right yes; is that true today? A. What is that? 6098

Q. Is the same condition true today?

Mr. Beach:

We object to it.

The Court:

Of course, these witnesses are all interested as parties.

Mr. Beach:

Naturally.

The Court:

You see that is modified by a letter, which, if I understand, there is no question about, that was sent out by the United Hatters. I think that letter was. 6099

Mr. Davenport:

Yes, your Honor.

The Court:

Which indicates that these individual members are not to be put to any expense or even the payment of a judgment. Well, now, just the status of their interest in the matter would be material in cross examination. This witness says that he kept on paying dues because he had to to get work. Now, is that influence resting upon him at this time when he is giving his testimony? 6100

Mr. Beach:

That is the very proposition that I object to, if Your Honor please.

The Court:

I think that is admissible as bearing upon his interest while testifying.

Mr. Beach:

I will ask your Honor for an exception.

6101 The Court:

Proceed.

Q. Now, the question before you, Mr. Allen, is whether or not this condition which we spoke about in 1903, when you had to belong to a union in order to earn a living at your trade, still exists today? A. Why, I suppose I could get out of the trade and go somewhere else; yes, there is nothing to stop me from doing that.

Q. Is the condition the same today as it was in 1903 in that respect? A. What respect do you mean?

6102 Q. You stated that you had to belong to a union in order to earn a living at your trade in 1903, and that that was the reason you continued a member; now I am asking you whether that same condition exists today? A. If I didn't want to stay in the trade I didn't have to.

Q. I will put the question to you again if you will listen to it.

The Court:

Now, Mr. Witness, if you will stop talking it will save you trouble. Just listen to the question and make a straight answer. You have said here that you kept right on paying your dues after this suit was brought, and

6103 you gave as a reason that you had to do it to get a living; now are you under the same condition today?

A. Why, I couldn't better myself if I left.

The Court:

You don't answer me; are you under the same conditions today? A. Why, of course, I am.

By Mr. Merritt:

Q. Did you have any savings bank account? A. I didn't have any to have it attached. Everything else I had was attached.

6104 Q. Did you testify whether or not you received a letter from the union concerning the employment of counsel? A. I didn't receive any letter from them.

Q. And you never signed any paper authorizing the employment of counsel in your behalf in this case? A. No, sir.

Q. And have you ever taken any steps to defend yourself in this case? A. I have not.

Q. Well, explain why it is, when you had property attached that you took no steps to defend yourself in this case? A. Why, I wasn't the only one that was attached.

Q. I know, but you were one of the people who were attached? A. What good would it do for me to tackle it alone? **6105**

Q. It was your own matter. Didn't you feel that you had any business? A. I felt that I was imposed on anyway; my place was attached, and I couldn't either sell it or borrow it—there was a time when I needed money, and I couldn't get a cent because the Loewe attachment was on it.

Q. Why didn't you then take steps to defend yourself in the case if you had an interest in it? A. I wasn't in a position to do it. It takes too much money to go into court. **6106**

Q. Is that the best explanation you can give; it is a very plain one I think.

Q. Didn't you have your expenses paid to come and testify here at the last trial? A. Yes, I had my expenses paid; not enough to pay for coming though.

Q. Not enough to pay— A. (Interrupting) No.

Q. You for coming and testifying in your own behalf in defense of your own property? A. Why, sure in that case it was enough.

Q. You mean you didn't have enough to provide for anything in addition to your expenses? A. I had carfare paid and $4.00 **6107**

Q. That is, you had $4.00 in addition to your expenses? A. No. In addition to carfare.

RE-DIRECT EXAMINATION

By Mr. Beach:

Q. Mr. Allen, you were foreman at the Lee factory, you say, I believe? A. Yes, sir.

Q. Can you state how much you were getting a day there? A. At that time? **6108**

Q. Yes? A. Twenty five a week.

Q. Twenty five dollars a week. That's all.

RE-CROSS EXAMINATION

By Mr. Merritt:

Q. Did you spend the night here at the last trial? A. The night?

6109 Q. Yes? A. No.

Q. Then the only expense you had, in addition to carfare, were lunch—expenses of something to eat? A. Why, surely.

Q. That was the only expense to be deducted from that four dollars that you had? A. That was all.

Mr. Davenport:

That was a day's pay, wasn't it?

Q. Yes; that was a day's wages, wasn't it? A. I don't think so.

Mr. Davenport:

6110 Intended to be such, wasn't it; who did you get it from? A. Mr. Maher.

Mr. Davenport:

James P. Maher?

Witness:

Yes, sir.

The Court:

You better ascertain whether they were also paid their time, as well as expenses, and state the fact to be as you find it. I don't know whether you have looked that up or not.

6111 Witness excused.

Witness:

THOMAS H. ALLEN,

sworn by Mr. Carroll.

The Court:

Now let me see if I understand it right; they were paid expenses and their time; is that your understanding?

Mr. Beach:

6112 I suppose that is what this witness intended to testify; but whether that was true in all cases, I don't know, but I will find out.

Q. Mr. Allen, you have been sworn? A. Yes.

Q. What is your full name? A. Thomas H.

Q. Where do you live? A. 46 Washington Avenue, Danbury.

Q. How old are you? A. Fifty-eight years old; going fifty-nine.

Q. Married man with children? A. Yes.

Q. How long have you lived in Danbury? A. Since 1880. 6113

Q. And do you belong to some local union there? A. The Hat Finishers' Association.

Q. The Finishers? A. Yes.

Q. How long have you belonged to the Hat Finishers' Association? A. Since '82—1882.

Q. Have you ever been a delegate to any convention — A. No, sir.

Q. Either of the United Hatters— A. No, sir.

Q. Or of the American Federation of Labor? A. No, sir. 6114

Q. Have you ever held any office in your local union? A. No, sir.

Q. Or in the United Hatters of North America? A. No, sir.

Q. Prior to October, 1903, were you a regular reader of the Journal of the United Hatters? A. I never read it, sir.

Q. Where were you working in 1902? A. 1902, I think—I couldn't say—I worked for the Tweedy Mfg. Co. until they went out of business. I had worked there, I think about eight years; remained there 'till they went out of business. I went there from to Lee, Hawley & Murphy's. 6115

Q. And did you ever work for Mr. Loewe? A. Yes, sir.

Q. When was that? A. I think it was either 1883 or 1884. 1884 I think I worked at Loewe's.

Q. That was when he was running a union shop? A. Yes, sir.

Q. You said you didn't read—

Witness:

(Interrupting) No, sir. 6116

Q. What did you say about reading the Journal of the United Hatters? A. I never read it.

Q. And the American Federationist, do you know such a magazine? A. I don't know anything about it.

Q. When did you first know of the strike at the Loewe factory? A. I didn't know there was any strike until I heard the men at the shop talking that the sheriff was around attaching people's property; they were around I think, the day before my property was attached; when

6117 I came home I saw the sheriff and the property was attached; that was the first I knew about it. I asked what it was attached for.

Q. Now wait a minute, just answer the questions, and answer them just as briefly as you can, and at the same time state what the fact is. Do you mean that you never heard of any trouble at all in Loewe's factory—A. No, sir; never heard of it.

Q. Wait 'till I finish the question now—in Loewe's factory until the sheriff served you with attachment in this case? A. No, I never heard of any trouble.

6118 Q. Now before you were served with papers in this case, did you or not know that the officers and agents of the United Hatters were accused of following up the goods and customers of Mr. Loewe in other states and preventing their sale? A. I did not, sir.

Q. Did you know prior to October, 1903, that the agents and officers of the United Hatters had been accused of following up the goods and customers of other manufacturers for the purpose of preventing sales? A. I did not.

Mr. Beach:

6119 I think that is all.

CROSS EXAMINATION

By Mr. Merritt:

Q. Did you talk with anyone about this suit, immediately after it was started? A. Well, the men in the shop asked about the attachments, what they were for; the men that worked in the shop with me; and then Mr. Taylor, the time here before; I think that is about all.

Q. Did you talk with the men in the shop in regard to it? A. Yes, that I was attached.

6120 Q. Did you receive a letter concerning the employment of counsel? A. Yes, sir.

Q. Was it the one I read? A. I think so, I wouldn't swear, but I think it was.

Q. Addressed to Mr. Connolley? A. Yes, sir.

Q. And you signed it and mailed it back to Mr. Connolley? A. Yes, sir.

Q. Now after the suit was started you continued a member? A. Yes, sir.

Q. Paid dues? A. Yes, sir.

Q. And made no protest? A. No, sir. 6121

Q. And made no effort to bring about the election of any different officers? A. No, sir.

Mr. Davenport:

Or prevent his organization from doing it?

Q. Took no steps to prevent your organization from doing the things that were alleged in the complaint? A. I didn't know that they had done anything that was wrong.

Q. Let me see what you mean by that. Do you mean you didn't think these things were wrong, or do you mean you didn't think your organization was doing them? A. I didn't think they were doing them. 6122

Q. Did you take any steps to find out? A. No, sir; I didn't.

Q. Well, did you have any information as to what your organization was doing? A. I did not.

Q. You never looked at the Journal? A. No, sir.

Q. They were placed in the factory where you worked, weren't they? A. Well, once in a while, I seen them on the block shelf; most of the time I found them in the toilet; the men took them in the toilet.

Q. Read them when they were in the toilet? A. Dropped them in the waste box there. That is about the size where most of them were. 6123

Q. You never looked into one? A. I didn't.

Q. You knew they were there for the purpose of informing the members what the officers were doing and how the money was being spent? A. I couldn't tell what they were put for.

Q. You inferred that? A. No, I didn't think they were more than any other advertising bills that come around the shop.

Q. What did you think they were there to advertise? A. I couldn't tell you what I did think they were there for. 6124

Q. Do you mean to tell this jury that it never occurred to you that these journals were put there to inform you what your organization was doing? A. No, sir; I never took any stock in it.

Q. Why didn't you take any stock in it? A. I don't know. I didn't.

6125 Q. Is that the Journal that you refer to (showing witness copy)? A. I don't know; I couldn't tell you.

Q. Don't you know it says "Journal of the United Hatters of North America"? A. I know it says that; but I couldn't say it looks like one of them.

Q. It doesn't look like it; does this look like it (showing another)? A. It looks like it.

Q. You read on there "Journal of the United Hatters of North America"? A. I never picked up any to read it; they lay on the block shelf.

6126 Q. You read on it "Journal of the United Hatters of North America"? A. I might.

Q. You knew your organization was publishing a Journal? A. I didn't know who was publishing it, to tell the truth, and that is a fact. It come there.

Q. Do you mean to say that as a man of reasonable intelligence it didn't ever occur to you that that magazine appearing in your factory again and again where your men were at work, was put there in order to put before the members what was being done with their money? A. I never thought what it was put there for; never give it a thought.

6127 Q. You haven't any doubt now that was the purpose of it, have you? A. I wouldn't be surprised.

Q. You wouldn't be surprised? A. No, I wouldn't say it was there for that purpose.

Q. Did you ever take any steps to find out what your organization was doing? A. No, sir.

Q. Either before or after the suit? A. No, sir.

Q. Never went to a meeting? A. Once in a great while; maybe a meeting once in a year or two.

Q. Did you find out at the meetings what your organization was doing? A. I didn't and lots of times I

6128 got excused before the meeting was over and went home.

Q. You didn't stay; you went as soon as you could get away? A. I went as soon as I could get away.

Q. You never went to see the officers and inquire what your organization was doing? A. No, sir.

Q. What led you to believe the things complained of to be untrue if you never took the time and trouble to read these documents? A. I didn't know anything about them. I was not an officer.

Q. You said a little while ago that you didn't think they were true? A. I don't think they were. I think the officers went out of their way; that is my opinion. 6129

Q. You formed you conclusion without using the obvious means of information that were put before you? A. That is what I done.

Q. Did you know your organization was engaged in trying to unionize as many factories as possible? A. No, sir.

Q. You never read your constitution and by-laws? A. No, sir; never read the by-laws of the Hatters. I have belonged since 1882. 6130

Q. You never took any interest as to the character of the organization to which you belonged? A. No, sir.

Q. Do you belong to any other societies? A. Not any other labor organization.

Q. Any other societies at all? A. Well, I belong to the Hiberians and Knights of Columbus.

Q. Do you know anything more about them than you do about the Hatters? A. I don't; no, sir.

Q. You joined an organization and don't know the object of that organization? A. The only think I know, the Knights of Columbus, if I was sick, and in good standing, kept my dues paid, $5.00, and anything happened, and I should die my folks would get a thousand dollars. 6131

The Court:

The Knights of Columbus is he talking about?

Mr. Merritt:

I guess so.

The Court:

Well, leave that out. Not that the witness was to blame, for you asked him if he belonged to any other.

Mr. Merritt: 6132

Yes, Your Honor, I brought that down.

Q. Did you receive one of these warnings "Exhibit 86"? A. Yes, sir. That is from Loewe, ain't it?

Q. Yes. And you received that in 1902? A. I don't know when I received it, but I received one.

Q. About the time the strike took place? A. Somewhere along there.

Q. Did you ever talk with anyone concerning it? A. No, sir; just took it up when I got home from the

6133 shop, and looked at it, laid it down on the table and walked off.

Q. You never talked to anyone about it? A. No; I wouldn't say positive I didn't. I might have said to my children I've got a warning about something, and put it on the table, that was all.

Q. Was the witness who went ahead of you any relation of yours? A. First cousin.

Q. Lives next door to you? A. Yes, sir.

Q. You and he never have talked about any of these matters? A. No, sir; we were not on speaking terms.

6134 Q. About the same relation that you hold to the United Hatters? A. Well, I will tell you the truth.

Q. Are you a reader of the Danbury News? A. I get it once in while and look it over. Not very often. We get it.

Q. You read the trade matters in the Danbury News? A. No, sir.

Q. Never did? A. No, sir; very little do I read.

Q. Are you willing to swear positively that you never read any matter relating to your organization in the Danbury News? A. Yes, sir.

6135 Q. Now did you attend meetings in 1900 and 1903? A. I couldn't tell you whether I did or not. I didn't attend any way over once or twice a year. Maybe I didn't go in a year at all. Lots of times I didn't go in over a year to a meeting.

Q. You don't recall whether you attended any meeting in 1900 to 1903? A. No, I couldn't tell you.

Q. Your recollection is not very clear on that point? A. I couldn't tell you anything about that?

Q. How is your memory back of 1900? A. Pretty good.

6136 Q. Why can't you tell that? A. Because I couldn't something like that; but something very important I might think of it, but I didn't think anything about the hatters meetings any more than I would of going to the shop.

Q. And you are willing to testify here that although you can't tell me now whether you attended any meetings from 1900 to 1903— A. No, I couldn't tell you.

Q. You can positively swear that you never heard or read in any way anything to the effect that your organ-

ization was engaged in boycotting back as far as 1898? A. No, sir; I never heard anything about it. 6137

Q. Do I understand that your recollection is very positive and unequivocal on that point, while on the question of your own action of going to meetings you are not able to testify? A. Well, I didn't take any interest in it and it slipped my mind; I couldn't tell you when I went to the meeting; I couldn't tell you when I went to the last meeting.

Q. Did you ever hear that organized labor was engaged in boycotting? A. No, sir.

Q. Never heard of such a thing? A. No, sir. 6138

Q. Didn't know that trade unions had been accused of boycotting? A. No, sir.

Q. Did you ever hear of them conducting any picketing? A. Well, at the time in 1883 I heard there was picketing during the time there was a strike at Danbury over there; I worked to Tweedy's then.

Q. You did know that organized labor had indulged in picketing? A. We went to see the men that worked in the factory to see who was going to take our places, that was what was done; nobody else went; we wanted to see who worked in the factory White said—

Q. Well, I don't want so much of a narrative account. What I am trying to get at is your conception of organized labor, whether you didn't know there performance was to combine to not work and combine to not buy in order to compel the employer to pay higher wages? A. I don't know anything about that. 6139

Q. You didn't know anything about it? A. No, sir.

Q. Never had any such conception of organized labor? A. No, sir.

Q. Why did you join the union? A. Well, on account of conditions were better.

Q. It never occurred to you as to the manner in which the conditions were made better? A. Well, I heard they were better and wages were better, and I worked in a shop that was foul and then I worked in a union shop, so I found out the difference. I think the conditions were better. 6140

Q. It never occurred to you as to the method by which conditions were made better? A. Why, they always had an understanding with the boss, and if anything was wrong it

6141 would be corrected quicker than it would if he was running an independent shop.

Q. Have you ever seen these circulars? A. No.

Q. Look at it, don't be so quick about it? A. No, I never seen any of them to my knowledge.

Q. Well, you would know about it if you had? A. No.

Q. Have you read any of it to see? A. No, I can't see without glasses.

Q. Have you got a pair of glasses here? A. No, sir; I have not.

6142 Q. Let me read it to you. It is a circular with the Hatters' label: "Brothers. The attention of all who wear felt or fur hats, either soft or stiff is respectfully called to the union label of the United Hatters of North America. It can be found under the sweat band of all union made hats, and is sewed or stitched in." Did you ever read anything like that? A. No, sir.

Q. Did you know you had a union label? A. I see it in the hats.

Q. Did you know you had agents on the road advertising it? A. I did.

6143 Q. But you never heard it stated that it was sewed and stitched in, etc.? A. I see it in the factory.

Q. You never saw any circulars containing anything of that kind? A. No, I see it in the factory; it was sewed.

Q. Let me go on "In May, 1894, we issued a circular calling attention to eleven non-union or scab concerns at Danbury, Conn., and requested organized labor to assist our union to bring this unfair and wealthy combination to terms. Three of these concerns have become fair or union during the past year. The fight is still on against the other eight firms, and

6144 with the assistance of organized labor and the union label we are confident that we will bring them to terms. The following are their names, and where goods are sold from: Meeker Brothers, goods sold by C. H. Tenney & Co., 8 Washington Place, New York City; William Beckerle & Co., goods sold by Taylor & Seeley, 201 Green Street, New York City; D. E. Loewe & Co., goods sold by Connett, Read & Co., 17 Waverly Place, New York City; E. A. Mallory & Son, goods sold by Raymond, Hawes & Co., No. 2 West Fourth Street, New York City, and Chicago; C. H. Merritt & Son, goods sold from 22 Washington Place, New York City; T. C. Millard & Co.,

goods sold from 14 Waverly Place, New York City; White, Tweedy & Smith, goods sold from 14 Waverly Place, New York City." 6145

"We would most earnestly appeal to you to help us in our fight against these employers of scab or non union labor, and would ask, as a special favor, that you would appoint committees to visit the retail hat dealers in your locality, and inform them that members of Labor Organizations and their friends are not obliged to purchase hats from people who handle the goods of the above named firms, or of any other firms who run foul or non-union shop, or, in other words, who are not entitled to use the union label.

"If you will do this for us it will enable us to conquer this unfair and wealth combination. You will confer a favor by informing us of the results of your action. Help us in this hour of our distress, and we will never forget it. 6146

"We desire to return our sincere thanks to organized labor for the support accorded our label in the past, and we hope to merit the same assistance in the future." And it is signed "John Phillips, Secretary, 477 Park Avenue, Brooklyn, N. Y., Edward Barrett, President, Edward Moore, Treasurer, of the United Hatters of North America." Didn't you ever see or hear about a circular of that kind? A. No, sir. 6147

Q. Do you know whether or not Edward Barrett was ever President of your organization? A. Who?

Q. Edward Barrett? A. Yes.

Q. When was he President? A. I couldn't tell you.

Q. Well, it was before Moffitt, wasn't it? A. I guess so.

Q. Are you acquainted with any of the officers of your organization? A. Well, just to speak to them.

Q. Whom do you know? A. Mr. Shalvoy.

Q. Who else? A. Mr. McHugh, President.

Q. He is President now? A. Yes. 6148

Q. Do you know who the officers were in 1903? A. I couldn't tell you, but I knew all the officers since 1882; knew them, but I couldn't tell you when they were in office.

Q. Did you know Charles Barrett? A. Yes, sir.

Q. Did you know Patrick Connolley? A. Well, I knew him as a citizen too.

Q. You didn't know him to speak to? A. Yes.

Q. Did you know James P. Maher? A. Well, barely to salute him.

6149 Q. Martin Lawlor? A. Just the same; I was introduced to him a little over a year ago.

Q. Martin Gorman? A. Gorman?

Q. Yes? A. Yes.

Q. You know Mr. Gorman? A. Yes, I know Mr. Gorman.

Q. You knew these men well? A. I knew Martin Gorman and Mr. Shalvoy well.

Q. How long have you known Mr. Gorman well? A. I couldn't tell you, it's been a long time.

6150 Q. Know him in a social way? A. Yes, sir.

Q. Been to his house? A. No, sir.

Q. Has he ever been to your house? A. No, sir.

Q. Where did you see him? A. I met him on the street and when he was in the shoe business I used to trade with him.

Q. Way back in 1902, did you see him then? A. I couldn't tell you; don't think I was acquainted with him then I wouldn't be positive.

Q. You heard of the Roelofs suit, didn't you? A. No, sir.

6151 Q. Never heard the suit was started by Roelofs? A. No, sir.

Q. Did you ever hear of the Roelofs' fight? A. No, sir.

Q. You never heard that your organization had any contest with Henry H. Roelofs & Co.? A. I didn't.

Q. I will ask you the same question as to F. Berg & Co.? A. No, sir.

Mr. Davenport:

He says he don't understand anything about boycotting; ask him if he understands about a scab hat.

6152 Q. Yes; did you ever hear the phrase a scab hat? A. No.

Q. Never heard of it? A. I have heard of running independent shops and fair shops.

Q. Those are the only words you ever heard? A. In the trade.

Q. Didn't you ever hear of foul shops? A. Yes foul shops used sometimes.

Q. You never heard the word scab? A. Not to my memory.

Q. Ever though you remember this time when they were picketing everywhere? A. I went there to see who was going in there in the place we were employed; didn't go to any other shop but to the shop we worked in. I never tried to prevent any man from going in there. **6153**

Q. Let me ask you if you testified about the Danbury News; did you testify that you never read anything in the Danbury News about the Loewe trouble? A. Yes, I never did.

Q. You didn't read either of those two articles stating that the men had been ordered out of the shop? A. No, sir.

Q. You knew they had been ordered out? A. I didn't know. **6154**

Q. You heard of it? A. I didn't.

Q. You didn't hear of it until the suit was started? A. I didn't hear anything about it? A. I didn't.

Q. You didn't hear anything about it until the suit was started? A. No, sir; I didn't go on the street but very seldom. After I got through at the shop I came home. I have got plenty to do when I come home.

Mr. Merritt:

It is admitted that expenses were paid and that he got his day's wages too. **6155**

Witness excused.

Witness,

THOMAS E. McGAULEY,

Sworn by Mr. Carroll:

EXAMINED

By Mr. Beach:

Q. What is your full name? A. Thomas E. McGauley. **6156**

Q. Did you testify at the other trial, do you remember? A. Yes, sir.

Q. Your name here is Thomas McGauley, now he says Thomas E.? A. Probably I didn't give the initial, but it is Thomas E.; yes, sir; I testified at the other trial.

Q. You are one of the defendants here? A. Yes, sir.

Q. Where do you live? A. 38 Washington Avenue.

Q. How old are you? A. Fifty my last birthday.

Q. Are you a family man with children? A. Yes, sir.

6157 Q. What local hat union do you belong to? A. Finishers' Association.

Q. When did you join it, do you know? A. 1885; I believe it was in December, 1885, or January, 1886, when the shop went fair; December, 1885, or January, 1886, I don't remember which; first of January.

Q. You have answered it. Never mind the detail. I don't care exactly.

Q. Were you ever a delegate to any convention? A. No, sir.

6158 Q. Prior to 1903 were you ever an officer in your local union? A. No, sir.

Q. Or in the United Hatters of North America? A. No, sir.

Q. Where did you work in 1900 to 1903? A. Why, I worked in Lee's, 1903; two years before that I worked in John W. Green's factory.

Q. Were you during those years, 1900 and 1903, a reader of the Journal of the United Hatters? A. No, sir.

6159 Q Do you recollect reading in that Journal anything about Berg & Co.? A. Never read the Journal.

Q. Or do you recollect reading anything about Roelofs & Co.? A. No, sir.

Q. Or about Loewe? A. No, sir.

Q. When did you first learn of any trouble in the Loewe factory in connection with the United Hatters? A. When I got the papers served on me was the first I knew of it.

Q. That was in 1903? A. Yes, sir.

Q. That was some fourteen months after the strike? A. I don't know how long.

6160 Q. What I am getting at is whether or not you had heard there was a strike at Loewe's any time before you was served with papers in this case? A. No, sir.

Q. Did you know, Mr. McGauley, that the officers and agents of the United Hatters of North America were charged with following up the goods and customers of manufacturers in different states to prevent their sale? A. No, sir.

Q. Were you ever a party to any conspiracy to restrain the trade of Mr. Loewe, or any other manufacturer? A. Never; no, sir.

Mr. Beach:

I think that is all. 6161

CROSS EXAMINATION

By Mr. Merritt:

Q. Were you a reader of the Danbury News? A. Yes, sir.

Q. A regular reader? A. Why, I read it; I didn't read everything in it probably.

Q. You were a regular subscriber? A. Yes, it come to the house every day.

Q. That was true in 1902 and '03? A. Yes, sir. 6162

Q. Well, now, are you willing to testify that during the years in which you read that that you always omitted any article which may have appeared in the news relative to your organization? A. I didn't read it.

Q. You never read any article in the Danbury News relative to your organization? A. No, sir.

Q. You are sure about that? A. Quite sure.

Q. And it wouldn't do me any good to read any of these to you to refresh your recollection; you are positive? A. Those two pieces you read this morning, you mean?

Q. Well, I have some others here; a great many of them? A. I didn't see them two pieces. 6163

Q. Did you see anything about the Roelofs suit? A. No, sir.

Q. Never heard of the Roelofs suit until after you were sued? A. No, sir.

Q. Did you read anything about the Berg case? A. No, sir.

Q. Did you read anything about advertising the union label? A. No, I didn't.

Q. And you read nothing about the men being called out of the Loewe factory? A. I didn't, no, sir. 6164

Q. Did you read John Moffitt's report which appeared in big head lines in the Danbury News, covering several columns? A. No, sir, I didn't.

Q. Are you willing to swear that although you are a regular reader of and subscriber to the Danbury News that you never read any of those matters in it? A. Yes, sir; I will swear to it.

6165 Q. Do you mean by that that you don't remember, or are you willing to swear that you didn't read them? A. Why, I will swear that I didn't read them.

Q. Now in regard to this Journal of the United Hatters, it was left at the factory where you were working from time to time? A. Yes, sir.

Q. You saw them lying around the room? A. Saw them on the steward's bench.

Q. You knew they were there for the members to take and read if they wanted to, didn't you? A. Yes, sir; I knew they come there for that purpose.

6166 Q. You knew they were Journals of the United Hatters? A. Yes, sir.

Q. That is of your organization? You never opened one at the time, did you? A. Never read one of them.

Q. You assumed, didn't you, that they contained accounts of your organization's work? A. I suppose so.

Q. Then if you had wanted to know anything about what your organization was doing, you would have opened the Journal, wouldn't you? A. I would, and read it.

Q. And have found what you wanted in there? A. I didn't care much about it.

6167 Q. You were willing to leave the matter in the hands of those people who took active part in attending meetings, etc.? A. Yes, sir, I supposed they were all right.

Q. Did you attend any meetings in 1900 to 1903? A. Why, I suppose I did; I attended meetings occasionally.

Q. You got notices of meetings, didn't you? A. Notice posted in the factory; yes, sir.

Q. And also in the Danbury News, wasn't it, at times? A. I don't know; I never read that in the Danbury News. There was notice put up in the factory.

6168 Q. A notice posted in the factory stating the object of the meeting? A. Why no; not that I seen and remember now.

Q. Have you attended any meetings where you voted for delegates to the United Hatters of North America Convention? A. Did I attend?

Q. Yes? A. And voted for delegates? Why I voted for delegates, but they weren't always sent that I voted for, you know.

Q. Did you ever vote for any that were sent? A. Why I suppose so. **6169**

Q. Are you a personal friend of any of the officers? A. I know them to speak to; yes, sir.

Q. Well, did you know any of them socially? A. No, sir.

Q. Did you know any of the delegates that went to the conventions socially? A. No, sir.

Q. Sure of that are you? A. Yes, sir.

Q. Do you recall whom the delegates were to any of the United Hatters Conventions? A. Why, I suppose some of them were social acquaintances of mine. **6170**

Q. Well, let's see, just a moment. I will read two or three Danbury people here. Do you know William P. Bailey? A. No, sir.

Mr. Beach:

He is not in Danbury, is he?

Mr. Merritt:

No, he's not in Danbury; but Danbury and Bethel.

Q. Martin Gorman? A. No, sir.

Q. P. H. Connolley? A. I know him. Never spoke to the man in my life.

Q. John Gaffney? A. No, sir. **6171**

Mr. Beach:

What are you asking about, 1903?

Q. In 1900, and whether you knew him prior to the suit? A. I didn't.

Q. Michael Griffin? A. No, sir.

Q. Patrick Ryan? A. No, sir.

Q. Charles J. Barrett? A. Yes, I knew Charley Barrett.

Q. Knew him well? A. I was acquainted with him, that is all; speak to him on the street, say good morning or something like that. **6172**

Q. H. C. Shalvoy? A. Yes.

Q. Knew him well? A. Just the same; speak to him on the street, good morning, or something like that.

Q. Edward J. Martin? A. No, sir.

Q. Charles R. Foote? A. No, sir.

Q. Benjamin K. Braman? A. No, sir; I don't know him.

Q. John Cords? A. No, sir.

Q. Frank P. Ferry? A. No, sir.

6173 Q. Peter McGlone? A. No, sir.
Q. Peter Gallagher? A. No, sir.
Q. James P. Maher? A. I knew Mr. Maher; not acquainted with him.
Q. Charles Hanstein? A. No, sir.
Q. Patrick J. Lynch? A. No, sir.
Q. Simon Blake? A. Yes, sir.
Q. Knew him well? A. Acquainted, that is all.
Q. Just knew him to speak to on the street? A. That is all.

6174 Q. Louis E. Orton? A. Yes, sir.
Q. Know him well? A. Just acquainted with him, that is all.
Q. Patrick F. Drumm? A. Yes, sir.
Q. The same way? A. The same way.
Q. Charles H. Velie? A. Yes, sir.
Q. John Rothery? A. No, sir.
Q. Now, I take it as to those men you stated you didn't know them socially that you just knew them to speak to them? A. That was all.
Q. How about Daniel P. Kelley, do you know him? A. No, sir; I don't.

6175 Q. Chris Lee, do you know him? A. No, sir.
Q. Did you ever read these Convention proceedings? A. I didn't.
Q. Never opened them? A. No, sir.
Q. You knew they were published? A. I never seen any of the convention proceedings.
Q. You knew they were published, didn't you? A. No, sir.
Q. Did you ever attend any meetings where delegates reported on the convention? A. No, sir.

6176 Q. You never went to any meeting where delegates whom you voted for reported? A. No, sir; never did.
Q. Now did you ever vote for any delegates to the American Federation of Labor? A. No, I don't think I did.
Q. You knew your organization was part of the American Federation of Labor, didn't you? A. Yes, knew we were connected with it.
Q. Didn't you know the American Federation of Labor had a constitution providing for boycotting? A. No, sir.

Q. Didn't you know your own constitution? A. No, sir. 6177

Q. Never read it? A. No, sir; never read it.

Q. Did you ever hear that organized labor generally was engaged in boycotting? A. I didn't.

Q. Did you ever hear that unions had been accused of boycotting? A. No, sir.

Q. Do you ever read any other papers besides the Danbury News? A. Why I read a Sunday paper.

Q. What Sunday paper? A. American.

Q. You never read anywhere that union labor was being accused of boycotting? A. No, sir. 6178

Q. I ask you if you received one of these warnings? A. Is that what Mr. Loewe sent out?

Q. Yes? A. Yes, sir.

Q. You did receive one? A. Yes, sir.

Q. Did you do anything about it? A. No, sir.

Q. Talk to anyone about it? A. I didn't.

Q. And you didn't know at that time that the men had been called out of Loewe's factory? A. No, sir, I didn't.

Q. Where did you live then? A. Washington Avenue, 38. 6179

Q. You lived near the Allens? A. Yes, sir.

Q. The two gentlemen that just preceded you? A. Yes, sir.

Q. You never spoke to either of those men about this warning? A. No, sir.

Q. Well, after you received this warning you made no attempt to investigate the matter or to see whether anything was wrong or not? A. I knew I hadn't done anything against Mr. Loewe.

Q. You didn't know whether the organization you were contributing to did, you say? A. No, sir; I didn't. 6180

Q. What is that? A. I didn't know, no.

Q. Didn't you notice the way this read: "You will be held liable for the acts of your officers and agents?" A. I didn't read it.

Q. Didn't even look at it? A. No, sir.

Q. Don't you usually read what comes to you through the mail? A. I didn't read that; lots of papers come in there I don't read.

6181 Q. Did you know it was signed by D. E. Loewe & Co.? A. My wife told me; she said you got a notice there from D. E. Loewe.

Q. That is the only reason you knew you received it? A. Yes, sir; I meant to read it but when I went to look for it I couldn't find it.

Q. Well now, during all the time you lived and worked in Danbury from the time the United Hatters was formed in 1896 down to the date of suit you have worked in a union factory, haven't you? A. Yes, sir.

6182 Q. And during that time you have worked with a large number of these members of your organization? A. Yes, sir.

Q. During all that time you have been a subscriber to the Danbury News and read it from time to time? A. Yes, sir.

Q. And during all that time you have seen the hatters' journal lying around from to time? A. Yes.

Q. During all that time you have attended meetings occasionally? A. Yes.

6183 Q. Well, are you willing to testify positively that it never came to your attention in one form or another during that period—now going back to a time sixteen years ago—that you never heard that your organization was engaged in boycotting or accused of boycotting? A. I didn't hear it; no, sir; I will testify and swear to it.

Q. Did you get that notice in regard to employment of counsel? A. Yes, sir.

Q. Signed it? A. Yes, sir.

Q. Sent it back? A. Yes, sir.

Q. That is the notice, to the best of your recollection, that I read here? A. Yes, sir; I got Mr. Connolley's notice.

6184 Q. I asked you did you continue a member? A. Yes.

Recess.

Afternoon Session, Thursday, September 26th, 1912.

JOHN ELLEGETT 6185

Sworn by the Clerk.

EXAMINED

By Mr. Beach:

Q. Where do you live, Mr. Ellegett? A. Danbury.

Q. How long have you lived there? A. Close on to 56 years.

Q. What is your age? A. 72.

Q. Are you a family man, and children? A. Sir? 6186

Q. Are you a family man? A. None of my family married. I am a little deaf.

Q. I ask you whether you are a married man and got any children? A. I was married twice, I am a widower, yes, sir.

Q. What Union do you belong to? A. The Hatters' Union.

Q. Which branch of it? A. Making Department.

Q. In the Makers' Association of Danbury? A. Yes, sir.

Q. How long have you been a member of that association? A. Since 1870. 6187

Q. Were you ever an officer of the local union? A. No, sir.

Q. Of the national union? A. No, sir.

Q. Were you ever a delegate to any convention? A. No, sir.

Q. Either of the Hatters, the United Hatters or the American Federation of Labor? A. No, sir.

Q. Where were you working in 1902 if you remember? A. For Beckerle & Co.

Q. Were you, from 1900 to 1903, a reader of the United Hatters Journal? A. Well, I don't know as I ever heard it, sir, I have seen it around but I have never used it. 6188

Q. When did you first hear of any trouble in the Loewe factory about 1902? A. Oh, I didn't hear it until after the attachment, until after the lien was put on.

Q. You mean you didn't hear there was any trouble in the factory until you were served with the papers in this case? A. No, I didn't hear there was any trouble there until after the lien.

6189 Q. Did you know there had been a strike there in 1902 before that? A. No, sir.

Q. Did you ever know, Mr. Ellegett, that the officers and agents of the United Hatters were charged with having followed up the customers and goods of other manufacturers for the purpose of preventing their sale? A. No, nothing only what I heard them say about it.

Q. Heard what about it? A. I say nothing, I never saw it in print any way, only what I heard them talking about it.

6190 Q. What have you heard them talk about it? A. I heard them mention their union in that way about the difficulty?

Q. What difficulty? A. With Mr. Loewe and the hatters.

Q. That was after this suit was brought? A. Yes.

Q. Now confining yourself to the time before the suit was brought, tell me whether, before the suit was brought, you ever heard that the officers and agents of the union hatters were charged with following the customers and goods of manufacturers to prevent their sale? A. No, sir, I didn't know anything about it.

6191 Q. And as for Mr. Loewe you said you didn't know of any trouble with the union until the suit was brought? A. No, until after the lien was put on.

Mr. Beach:

That is all.

CROSS EXAMINATION

By Mr. Merritt:

Q. How long have you worked in Danbury prior to this suit? A. What?

Q. How long have you worked in Dnabury prior to this suit? A. I have lived in Danbury off and on since 6192 1856.

Q. Did you work in Danbury continuously from 1896 to 1903? A. No, sir, I have worked in North Orange, New Jersey, I have worked in Yonkers, N. Y., and Bethel for a while.

Q. What part of the time between 1896 and 1903 did you work in Danbury? A. In 1903 I was working for Beckerle & Co. at the time the lockout was started, I was to work there then.

Q. In 1903? A. Yes.

Q. Was there a lockout in 1903? A. Wasn't it, or was it? I thought it was. 6193

Q. Aren't you thinking of 1893, ten years before then? A. 1893 I think it was, wasn't it?

Q. I am talking about 1903, ten years after that? A. Oh, I don't know, but I will tell you, I was working to Rundell & Whites.

Q. Well, did you work in Danbury during the whole of 1903? A. Yes, I was working there I think.

Q. How about 1900, 1901 and 1902? A. No, I worked there in 1900, that is it. I worked for Hawes & Von Gall & Co. in 1903. 6194

Q. Well, the thing I am interested in is knowing whether you worked in Danbury all that time? A. I worked in Danbury all that time, yes.

Q. From 1900 to 1903? A. From 1900 to 1903, yes, I couldn't tell you which one of the shops I was in at that time.

Q. But you were in Danbury all that time working there? A. Yes.

Q. You heard that your organization had trouble with Henry H. Roeloff & Co., didn't you? A. No, sir, I didn't know anything at all about it.

Q. Never heard of that? A. No. 6195

Q. Ever heard the name of Henry H. Roeloff & Co.? A. I might have heard it spoken of I didn't take any interest in it or hear anything about it.

Q. Did you or didn't you? A. I never heard any.

Q. Never heard of Henry H. Roeloff & Co.? A. No, not that I know of.

Q. You never knew that your organization had had a fight with Henry H. Roeloff & Co.? A. No, sir, I did not.

Q. Never knew that your organization was sued? 6196
A. What's that?

Q. That Henry H. Roeloff & Co. had sued your organization? A. No, I did not.

Q. Never heard of that? A. No.

Q. Never read it in the paper you never heard any of the journeymen with whom you were working talk about it? A. I haven't read any in a long time.

Q. Well, it is a long time ago? A. It is further back than that since I gave up reading.

6197 Q. You never heard or read anything about Henry H. Roeloff & Co.? A. No.

Q. Well, how about F. Berg & Co., did you hear that? A. I don't know anything about that either. Well, I haven't been in the shops in a good while. I had an apoplectic strike my kidneys and it destroyed my sight, and I haven't been able to do anything.

Q. I am inquiring about the time when you were working in the shop? A. Well, I worked in the shop in 1903.

6198 Q. During all this time you worked there, you didn't hear anything about Henry H. Roeloff & Co.? A. No, I wasn't amongst them. There was a lot of us old fellows down there by ourselves, and we never had any interference with the others at all.

Q. You never heard anything about F. Berg & Co.? A. No, sir.

Q. During all this period of time did you hear from anyone that your organization had agents on the road? A. Not until lately, not until after the boycotting was done, not until after the lien was put on. We didn't know what they was doing in New York, the national

6199 officers. They was the ones that had it in charge. We didn't know what they did or what they wouldn't do. It was out of our jurisdiction. We had nothing to do about it whether they would or would not.

Q. Let us see whether that is true or not; these journals were left in the factory where you were working, weren't they? A. I never seen any of them in to the factory where I was.

Q. I thought you said you had seen them? A. I said I had seen them around but I didn't say I had seen them in the factory.

6200 Q. Haven't you seen them in the factory? A. No, sir, I don't know as I never seen one in the factory. They might have been brought there, but I never saw anything of them.

Q. You are willing to swear you never saw any of them in the factory? A. I mean to testify to that, yes, sir, I have never seen them brought there, or seen anybody brought them. I never saw any brought there.

Q. You worked in the Hawes-Von Gal factory in 1903? A. I did.

Q. Did you work there in 1902? A. I couldn't say, I might have done, I wouldn't be sure. 6201

Q. Well, where did you work before you went to the Hawes-Von Gal factory? A. Rundell & White on River St., as I told you.

Q. Then you went from Rundell & Whites to Hawes-VonGall? A. I did.

Q. Do you know when you went to work in Rundell & Whites? A. I think it was 1900.

Q. Then you think from 1900 to 1903 you were working first in Rundell & Whites, and then in Hawes-VonGall? A. I did.

Q. During that entire period of four years? A. Yes. 6202

Q. And you are willing to testify that you never saw a hatters' journal in either of those factories at any of the time you worked there during those four years? A. Yes, sir, I do.

Q. You understand what the hatters' journal is, don't you? A. Why I have seen some of them, but not in the shops.

Q. That is what you referred to? A. Well, I can't see very good. No, that is not the one, the ones I seen had a paper cover on. (The witness is shown a bound volume of the Journal). 6203

Q. You never saw any of those? A. No, sir.

Q. In any of the shops where you worked? A. No, sir, or in the house either. The ones that I seen had nothing but a paper cover on.

Q. I show you some earlier issues of the Journal, of 1898, and were those the ones you saw? A. No, it wasn't half as big as that and had a cover on a good deal like an almanac.

Mr. Beach:

He don't recognize the bound volume. 6204

Q. This is the Journal, it is bound in there, just this one? A. That ain't no indication like the one I saw.

Q. You understand me that there are a lot of them bound here together, and that is one of them that I am holding up? A. It is not like the one I see. I didn't see much of it any way. I just saw the cover on it, and had nothing more to do with it.

6205 Q. They were not as large as that? A. No, nor half, no.

Q. Were they about the size of this? A. No, sir.

Q. Larger or smaller? A. The leaves about the size of that.

Q. That is what I mean. Where did you see those that you refer to? A. I saw some of the young ones have them around in their hands.

Q. What? A. Some of the children have them around in their hands.

6206 Q. Where? A. In Danbury.

Q. In homes? A. No.

Q. Where abouts? A. On the street.

Q. You have seen them around the streets, have you? A. Yes.

Q. Seen many of them around the streets? A. No, not a great many, no. I have seen them in the hatters' hall also.

Q. You have seen them in the hatters' hall? A. Yes, sir.

Q. When was this? A. Some time ago; I couldn't tell you the date exactly.

6207 Q. Now you worked in the making shop? A. Yes, sir.

Q. At sizing? A. Yes.

Q. Weren't there a lot of other men there with you working in the same shop? A. There was a lot of men in the shop, yes, but they were working on machine. We were away in a kettle by ourselves, a lot of old men making hats by hand.

Q. You were all working in the same room, they were all working in the same room with you? A. Yes.

6208 Q. They were all members of your organization? A. Yes, sir.

Q. Do you know whether any other of the defendants in this case were working there with you? A. I don't know I couldn't say. I didn't see any of them, I don't see any of them here that worked there then. We had what we called battery rooms down one side of the shop, the men could go in and out and he had no interference with them. They were working on machines and we were doing old fashioned hand work.

Q. You saw these journals in the hatters' hall? A. Yes, sir. 6209

Q. Did you never look into them there? A. No, sir. I say I never looked in them.

Q. Well, you understood that your organization published these journals, didn't you? A. I supposed they did, I wasn't sure about it.

Q. You supposed that that journal that you saw there was the one they published? A. I supposed it was.

Q. You knew it was there for the members to read if they wanted to? A. If anybody wanted to look at it they could look at it. I suppose it was for the members. 6210

Q. Didn't you know it contained reports of what your organization was doing? A. I didn't see anything in it or know anything about what was in it.

Q. You assumed it contained reports as to what your organization was doing? A. I supposed something was in there but I don't know anything about it because I didn't read it.

Q. You supposed it contained matter relating to the organization? A. Well, it must be of interest about something.

Q. If you had wanted to know about your organization you would have opened it, wouldn't you? A. I used to hear talking about the boycott there but I didn't read anything about it. 6211

Q. If you wanted to know anything about your organization or what your officers were doing, you would have looked into the journal? A. I don't know as you would find out in the book if you did look in it.

Q. Well you would have looked in there? A. Well, I might, but I was in a hurry and I didn't look to see what was in it.

Q. How long since you have been able to read, or since you have read it? A. I have been using glasses over 20 years. 6212

Q. Oh, well, people read even when they do use glasses? A. I never read it any way.

Q. You know how to read, don't you? A. Yes, sir. I could read some, some time ago, but lately I cannot.

Q. Well, I am asking you about 10 years ago, didn't you read then? A. I could read a little about 10 or 12 years ago.

6213 Q. Didn't you read the Danbury News? A. No, sir, I never read the Danbury News myself.

Q. Did you ever read it? A. The children buys it and they used to read it.

Q. You never read it? A. Well, I used to once in a while look over a little of it, but lately I don't look at anything.

Q. I am not asking about now, I am asking about 10 years ago? A. I never used to have it, I never used to take it until they grew up.

6214 Q. 10 or 12 years ago you never looked into the Danbury News, is that what you mean? A. I said 10 or 12 years ago I might have looked at it some, but never used to take it. If it was in the house, or somebody else house I might read it.

Q. 10 or 12 years ago it came into your house constantly? A. I don't think so.

Q. You don't think so? A. No.

Q. You don't think 10 or 12 years ago you read the Danbury News at all? A. No, not much, no, but I might read it a little I told you, but I never made it a habit, I never made a habit of reading it, I never used to take it.

6215 Q. How did you get it? A. Well, when the children grew up they began to take it.

Q. Well, were your children grown up then? A. Well yes.

Q. Then it was taken regularly in your house at that time? A. The boy used to bring it once in a while and they began to take it regularly later.

Q. Didn't you ever read anything in the Danbury News relative to your trade matters? A. No, I didn't hear anything about it lately or any time.

Q. Just answer the question? A. Well, what is it?

6216 Q. Did you ever read anything in the Danbury News relative to the Danbury News? A. No.

Q. You never did? A. No.

Q. You are willing to swear to that positively, are you, that you never read the Journal? A. No, I never read the Journal.

Q. Did you ever look at the convention proceedings? A. No, sir, I did not.

Q. Never saw them? A. No, I never attended one, and I never saw them.

Q. Never saw them around the factory where you were working? A. No, sir, I never saw one of them brought in by anybody. 6217

Q. Did you attend any meetings in 1902 or anywhere down to 1903? A. No, I haven't been to a meeting in a long time, sir.

Q. Well, if you will just listen to the question, let's see? A. About the time Mr. Maher was elected president of the local societies I was there that night, and that is the last meeting I attended.

Q. You were there the night that he was elected? A. I was there when he was elected president of the local society. 6218

Q. Did you vote for him? A. I did, yes, sir.

Q. How long ago was that? A. That is about as far —about the last meeting I attended.

Q. You don't recall going to any meeting after that? A. No, I did not, no, I don't.

Q. Are you still working at the trade? A. No, sir.

Q. When did you quit? A. Four or 5 years ago.

Q. Didn't you ever vote for delegates to the convention of the American Federation of Labor? A. Not late years, no. 6219

Q. What? A. Not in 10 or 12 years, no.

Q. Prior to that time did you? A. Prior to that, yes, I did.

Q. Did you vote for delegates to the American Federation of Labor? A. No, sir.

Q. Never did? A. Well.

Q. Well, isn't it a fact you were a rather active union man 10 or 12 years ago? A. No, sir, I never was an officer of the union in my life, I am not active in that way, I never held an office in the union in my life.

Q. Weren't you rather active in attending meetings? A. Some years ago when I was younger I used to go down there pretty regularly, but since then I have had to give up travelling. 6220

Q. Didn't you ever attend any meetings where it was reported as to what your agents were doing on the road? A. Never heard it reported at any meeting. I guess they didn't have any agents in them days; not that we knew of or heard anything about. They used to do a great many things that we never knew anything about.

6221 Q. I ask you if you knew that you had agents on the road advertising the label? A. No, sir, I never did.

Q. Didn't you know that was a fact? A. No, I didn't know.

Q. Never knew of that down to the commencement of the suit? A. No, sir.

Q. You never heard of it from others? A. I never heard anything about it until after that lien was put on the property. We didn't know what was going on in New York any more than you do.

6222 Q. I am not asking what you knew, but whether you were ever informed about these matters? A. No, not until after this lien was put on, I didn't know anything at all about this matter. I don't think there was a man in town that knew it as far as I heard them say.

Q. That is your opinion, is it? A. Yes, sir.

Q. And that is your opinion, although you know that the Danbury News has printed accounts of it day after day and the hatters' journal was circulated and left in all of the factories and furnished full accounts of it, and still in your opinion no man in town knew of it? A. The hatters' journal was not in the factory where I worked and

6223 I never saw them brought in there by anybody.

Q. You would still adhere to that position if your officers took the witness stand and said that they did distribute the journal? A. To the factories?

Q. Yes? A. I never saw them distribute in there, I tell you. They didn't have no news to distribute there, the agents were that class of people, they come up there and they do as they please, so they didn't distribute them, I may say. If they did I would be hearing about it.

Q. You don't feel sure about Hawes & VonGall? A. I didn't see much of it, or even one.

6224 Q. I will ask you if your testimony is that you never knew that your agents were on the road advertising the union label? A. No, sir, I did not.

Q. Do you know that you owned a union label? A. Did I know that we owned a union label?

Q. Yes? A. Oh, yes.

Q. But you didn't know that it was being advertised? A. No, not in that way, no.

Q. Didn't you ever know or hear that organized labor was engaged in boycotts from time to time? A. No, sir, I did not. 6225

Q. Never heard such a thing about organized labor? A. No, sir, I never knew anything about a boycott or what a boycott was.

Q. What is that? A. I never knew anything about a boycott was, never heard the word boycott not until lately here, never heard it used until of late.

Q. That is until after the suit was started? A. Yes, sir.

Q. Didn't have any idea what a labor organization was? A. No, I didn't use to go around amongst them very much, so I didn't know. 6226

Q. Did you ever go to school? A. A little while.

Q. To the public schools? A. Yes.

Q. How long have you lived in this country? A. Pretty near 60 years.

Q. Pretty nearly 60 years, and when you were a boy you went to the public school; you have known how to read always? A. I could read some.

Q. You have known how to read? A. Yes, I could read a little.

Q. During all this time you have been associated with other members of your trade working in different factories and been a member of a labor organization and lived in the town of Danbury, where over 10% of the population were members of your organization, and you never heard that the labor organization engaged in boycotts? A. No, I never did, not until after that lien was put on by Mr. Loewe. 6227

Q. Did you know that your organization was engaged in trying to unionize factories? A. No.

Q. You didn't know that? A. No.

Q. Are you a voter? A. Yes, sir. 6228

Q. Were you a voter in 1902 and 1903? A. Yes, sir.

Q. How many children have you? A. Six.

Q. Are they grown up? A. Yes, sir.

Q. Were any of them members of the hatters' trade? A. No, sir.

Q. None of them are members of your organization? A. No, sir.

6229 Q. Did you have any personal friends among any of the officers prior to that time? A. No, sir. There is some of the officers I wouldn't know if I met them.

Q. No, but were there any of them you did know? A. Well, I know Mr. Maher.

Q. Who? A. James Maher.

Q. Personal friend of yours? A. Well, yes, the same as he is with the rest of them. I know him when he came to Danbury.

Q. What do you mean, he is a personal friend? A. He is as friendly with me as he is with the rest of all the
6230 members and the rest of the hatters. I tell you I don't know the hatters very much. I don't know the hatters officers. I did know Mr. Maher and Mr. Blake.

Q. Mr. Simon Blake, and you knew them well in 1902? A. Yes, I knew Mr. Blake quite well before he got to be an officer in the union. I knew Mr. Maher and Mr. Blake both of them before they ever got to be officers.

Q. Known them since they were boys? A. Yes, sir.

Q. You went to a meeting in order to elect Mr. Maher, or vote for him? A. In them times, yes.

6231 Q. Did you receive one of these warnings Exhibit 86? A. No, sir.

Q. I show you plaintiffs' Exhibit 112 for identification, Danbury City Director for 1902; is your name Patrick Ellegett? A. No, sir? A. My name is John Ellegett.

Q. Now here in the directory for 1902 for Danbury and which we used in sending out these warnings, I find your name is entered "John Ellegett, hatter, house 4 Prospect Street?" Is that your correct address? A. What date is that, 1902?

Q. Yes? A. That is wrong.

6232 Q. Where were you living in 1902? A. In Sheridan Street, 65 Sheridan Street, see if you find that number in there.

Q. No, that is No. 4 Prospect. When did you move? Did you live in Sheridan St. before you lived in Prospect? A. I lived in Prospect St. and then I moved to Sheridan St. in 1874 and moved back again in '95. My mother owned the property—

Q. Wait a moment? A. My mother owned the property and she died. She left it to my oldest son, we

were all living together in Sheridan Street and we moved up there about 1895, and probably it is his. The property is in his name instead of mine on Prospect. 6233

Q. Has your son always lived there? A. What do you say?

Q. Has your son always lived there? A. We are all living together, my two sons and daughters.

Q. I want to find out when you moved back there? A. To Prospect?

Q. Yes? A. In '95 I told you.

Q. 1905? A. No.

Q. 1895? A. Yes.

Q. Have you lived there ever since? A. Yes. 6234

Q. This directory is for 1902, and your address is down here as John Ellegett 4 Prospect St. in 1902, is that correct? A. Yes, we moved up there in 1898. The property is his and the address is there all right.

Q. Did you receive any letter from your union relative to the employment of counsel in this case? A. No, sir, I think not.

Q. You are sure of that? A. I am positive.

Q. And you never signed any letter or circular authorizing the employment of counsel? A. No, sir. 6235

Q. Did you take any steps whatsoever to defend yourself in this suit? A. Why, the same as the rest, I joined in with the crowd.

Q. The rest of them, or a good many of them, say they signed a letter authorizing the employment of counsel; you say you did not? A. Yes, notice was sent to me that a lien was on whatever it meant, so I brought it down to them and they told me all hands were going to go and fight it.

Q. You brought it around to who? A. To Mr. Connolley, the secretary. 6236

Q. You went down to see him at the Union headquarters? A. No, he kept a cigar store there.

Q. You went down to his store? A. Yes, sir, he was secretary and I brought it down to him.

Q. He told you it was all right they would take care of it? A. No, he said, if I wanted to go with the rest I could, or I could go single, and do as I was amind to about it.

6237 Q. He told you if you came in they would take care of the suit? A. I told him I would join in with the rest.

Q. And you didn't receive any letter or circular of any kind? A. That is all the notice I got, all of the letters.

Q. The notice you are referring to that you received is the attachment, isn't it? A. Yes.

Q. Then you didn't receive any circular? A. I think it was the attachment.

Q. Just listen to the question. Did you receive any letter or circular from your union concerning these suits?

6238 A. I couldn't tell you, I don't know whether it is the union that sent it, or the lawyer. Mr. Connolley told me if I wanted to go with the rest of the crowd I could. I believe it said yes or no on a piece of paper, that I could have my choice, I could fight it single or go with the crowd, so I told him I would go with the crowd. I would go with the rest.

Q. That letter or circular you received from your organization? A. I can't tell you whether it came from the lawyer that put the lien on or whether it came from

6239 the society I couldn't tell you. Can't tell which party sent it or who sent it, there is all there was to it, was yes or no in the case.

Q. Did you sign yes or no? A. I said I would go with the rest.

Q. Did you sign it? A. Why, no, I didn't have to sign it, it stuck there with the rest of the pile.

Q. That is, with Mr. Connolley? A. Yes, it lay in the box. I don't think any of them was signed, they might have been, but I didn't sign it, but he told me to chuck it with the rest.

6240 Q. It was something of a letter for you to sign? A. That is all there was to it, yes, or no, if I remember right.

Q. There was something beside yes or no on the paper? A. I can't tell you honestly I don't know that there was anything but them two questions, yes or no, I can't tell you how it was, there is all there was to it.

Q. You don't mean that. After you were sued you continued paying dues? A. Yes, I paid our dues always.

Q. And continued a member; you did not make any protests? A. No.

Q. Made no effort to prevent the re-election of the same officers? A. No, sir, I wasn't to any meeting. 6241

Q. What? A. I say I wasn't to any meeting to object to anything.

Q. You didn't take the trouble to go to any meeting? A. No, that is about the last meeting I was to. The last meeting was when they first elected Mr. Maher local president. I don't think I have attended a meeting since. That is 16 or 18 years ago.

JOHN J. CALLAHAN.

Sworn by the Clerk. 6242

EXAMINED

By Mr. Beach:

Q. Where do you live, Mr. Callahan? A. 67 Wooster St.

Q. 67 Wooster St. in Danbury? A. In Danbury.

Q. How long have you lived in Danbury? A. Well, since I was born there, about 58 or 9 years.

Q. Married man with children? A. Yes, sir.

Q. Which branch of the trade do you belong to? A. Finishing.

Q. Member of the Danbury Finishers' Union? A. Yes. 6243

Q How long have you been a member of that union? A. About 40 years, I think, not quite that. I have worked at the business 40 years, not a member of the union quite that, probably 36 or 7 years.

Q. And during that time and until 1903, Oct. 1903, were you a delegate to any convention? A. No, sir.

Q. Did you hold any office prior to Oct., 1903, in your local union? A. No, sir.

Q. Or in the United Hatters of North America? A. No. 6244

Q. Where were you working in 1903? A. Well, I couldn't be positively sure, but I think it was at either the Danbury or the National Soft Hat Co.

Q. Were those union factories then? A. Yes, they were both union. They were both union factories.

Q. Do you remember seeing the journal of the United Hatters around the factory at any time? A. Yes, I have seen it around the shop.

6245 Q. Were you a reader of the journal? A. No, I might have read it once or twice, but I never read it much.

Q. Do you remember prior to 1903 reading anything in the journal about the officers of the united hatters or their agents following the goods or customers of Mr. Berg's for the purpose of preventing the sale of their goods? A. No, sir.

Q. Do you remember reading anything in the journal prior to Oct., 1903, about the officers or agents of the United Hatters of North America following the goods
6246 of customers of H. H. Roeloff & Co. for the purpose of preventing their sales? A. No, sir.

Q. When did you first hear of any trouble or strike in the Loewe factory, so far as you remember? A. Why, I don't know I suppose in the course of a week I heard the talk.

Q. Was it before or after the men were out? A. When the men came out.

Q. After the men came out, down to the time when the papers were served on you in this suit, did you know that the officers and agents of the United Hatters were
6247 charged with following Loewe's goods or Loewe's customers for the purpose of preventing a sale of his goods? A. No, sir, no.

Q. Were you ever knowingly a party to any conspiracy to restrain the trade of Mr. Loewe? A. No.

Mr. Beach:

That is all.

CROSS EXAMINATION

By Mr. Merritt:

Q. State how long you have lived in Danbury? A. Well, between 58 and 9 years.
6248

Q. Between what? A. Between 58 and 9 years. I was born in Danbury.

Q. You remember when the Finishers' Union and the Makers' Union united to form the United Hatters of North America? A. Well, I don't remember just the time, no.

Q. You remember it did take place? A. I remember it did take place, I heard of it afterwards.

Q. You don't know how long ago that was? A. No, I don't.

Q. Have you ever voted for any delegates to the United Hatters? A. No. 6249

Q. Did you ever vote for delegates to the American Federation of Labor? A. No, I never did.

Q. Or nominees to the American Federation of Labor Convention? A. No.

Q. You knew that your organization was a part of the American Federation of Labor, didn't you? A. Yes, it was understood it was affiliated with it, that is the word I heard used.

Q. Well, that is a pretty good word. Are you familiar with your own constitution and by laws? A. Well, no, I am not. 6250

Q. Never read them? A. No, I don't think I ever read them.

Q. Did you attend any meetings between 1900 and 1903? A. No, I don't think I did. Now, I got excused from attending meetings probably 12 or 14 years ago, or 15 years ago.

Q. Now let me ask you as I understand it you testified that you saw the journal of the United Hatters in the factory? A. Yes, I have seen copies of it in the shop.

Q. What shop was that? A. Well, I couldn't say what shop I had seen it in, but I have seen it in the shop where I have worked. 6251

Q. Well can't you tell what shops, when a man has just testified here he never saw it in the shops? A. Yes, I could say I have seen it in the National Soft shop.

Q. Is that where you were working? Either that or in the Danbury in 1903? A. Yes.

Q. All this time you have been working in Danbury, haven't you? A. Oh, yes, I have worked in Danbury most all my life time.

Q. And since 1896 you have always worked in a union factory? A. Yes. 6252

Q. That means that the men working with you were all members of the same organization? A. Yes, since 1906.

Q. You don't mean 1906, you mean 1896? A. 1896, yes.

Q. And in some instances there have been a large number of men working in the same room with you, haven't they? A. Oh, yes.

6253 Q. Now this journal which you saw around the factory you say you never looked into, but you say you did read it occasionally? A. Oh, yes, I have read it a few times, but not very much.

Q. Then you knew in a general way the character of the paper, you knew it was issued by the hatters, by the United Hatters, didn't you? A. Yes.

Q. That is the organization of which you were a member? A. Yes.

6254 Q. You knew it contained reports concerning the operations of your organization, didn't you? A. Well, I never see it much and I didnt' take much interest in it, to tell you the truth.

Q. Well, isn't it true that you knew it contained reports concerning your organization? A. Well, I couldn't say.

Q. How could you look into it or look at the page without knowing it contained reports concerning your organization? A. Well, I never read it but a few times, and I don't remember just what was in it.

6255 Q. Then you don't know whether the stuff that you read in it related to your organization in any way or not? A. Not at the present time, I don't remember.

Q. You cannot testify that what you read in there did not relate to boycotting, can you? A. I don' know, I couldn't call to mind any piece that I ever read.

Q. You don't remember even whether it related to your organization in any way, anything you read in it? A. I supposed that it belonged to the organization, but as I say, I don't remember nothing I read in it, as I only read it a few times.

6256 Q. Well, can you testify then that you never read or heard that your organization was engaged in boycotting? A. Yes, I will testify that I never knew the organization was boycotting.

Q. How can you testify to that when you don't remember what you read in the Hatters' Journal, which was your own official journal? A. I don't know. Is everything in that boycotting?

Q. No, but you don't remember you say, what was in it; it might have been boycotting, might it not? A. Well, I don't know, I couldn't tell you, I couldn't tell you a thing that I ever read in the journal.

Q. Now during all this time you have been in Danbury working with other members of the trade for a period of 7 or 8 years prior to the suit, didn't you ever have any conversation with any of your journeymen concerning the unionization of factories? A. I don't think so, no. 6257

Q. Never knew that your organization was engaged in trying to unionize factories? A. Yes, I recall that, certainly.

Q. Didn't you know what methods were employed by your organization to bring about the unionization of the factories? A. No.

Q. Never knew of that? A. No. 6258

Q. Didn't you infer and didn't you assume that your organization was engaged in trying to unionize factories by trying to prevent sales of non-union goods? A. No.

Q. Now in regard to the Berg matter, didn't you ever know that your organization was engaged in a combat or fight with Berg & Co.? A. No, sir.

Q. It never came to your attention in any way? A. No, sir.

Q. Even after it happened? A. I heard of it afterwards, of late years, I heard it talked.

Q. I mean after it happened but before this suit started? A. I don't ever remember about the Berg suit after this thing, this Loewe suit got started, then I have heard things talked, different things. 6259

Q. You heard things talked among people in Danbury after that? A. Yes.

Q. Did you ever hear about the Roeloff matter before that? A. Not at the time, I didn't know anything about it.

Q. Didn't you know that a suit had been brought by Henry H. Roeloff and Co. against the officers of your organization? A. No. 6260

Q. Never read that? A. Never read it.

Q. Never heard about it? A. Not at that time. I have heard it of late.

Q. Did you ever read about it or hear about it after it happened and before this suit was started? A. I would say no, I don't think I did.

Q. Are you a regular reader of the Danbury News? A. Well, yes, generally I read the paper, yes.

6261 Q. Did you read any matter in the news relative to your own organization? A. Why I must have at times, nothing that I remember of now. But I suppose I must have seen it.

Q. But you can't remember what you read 12 or 14 years ago, can you? A. No.

Q. Then how can you testify that you never had read anything about boycotting? A. I didn't testify.

Q. Well, anything about your organization engaged in boycotting? A. I didn't know that our organization was boycotting anything.

6262 Q. And are you willing to testify that you never read anything about your organization being engaged in boycotting in the Danbury News? A. You mean years ago or anytime?

Q. Years ago? A. I testify that I don't, not of reading anything about boycotting 9 or 10 years ago.

Q. And at the same time you testify that you can't recall what you did read 9 or 10 years ago? A. I do. Some things are impressed on our minds and others are not.

Q. That apparently is the situation. You remember other things, but you never remember anything about boy-

6263 cotting? A. No.

Q. Now how about this article, did you ever read this?

"Advertising the Hat Label.

The United Hatters have spent $30,000 in two years for that purpose."

Q. Does that sound familiar? A. I think I have read that before.

Q. In the Danbury News? A. I couldn't say where I have read it.

6264 Q. In the Danbury Evening News of June 18, 1900, and it starts with a headline, "Advertising the Hat Label."

The United Hatters have spent $30,000 in two years for that purpose."

Q. You knew they were advertising the label, didn't you? A. Yes.

Q. Let us see if this is your idea of what advertising was. This is all from the Danbury News.

"The United Hatters have spent $30,000 in two years for that purpose. The Cleveland, Ohio, World, in an article regarding the United Hatters says: 6265 3

A lesson can be learned by the labor unions of Cleveland by the work for the union label that is being done by the United Hatters of North America. A New Jersey concern recently refused to recognize the union, and ever since the organization has been carrying on a wonderful fight against the concern. So far the hatters show ever sign of whipping the employer, who is one of the largest manufacturers of soft hats in the country. They carry on quite a systematic fight, and one that is telling. The 6266 union has perfected a secret service whereby we know 4 just where every case of hats shipped out of the factory goes to, and keeps it in sight until it arrives at its destination. Here the case is watched and if it gose to a jobber, every sale that he makes is watched and known. The organization has several agents out throughout the country who are fighting the firm. Twice has one of our agents, Mr. Brady, been in Cleveland. He is here now. The first time he was here he visited the labor organizations and told them of the fight and asked that none but hats with the union label be purchased. One of the jobbers 6267 to whom the New Jersey firm sold hats, is located in Cleveland, and it was this fact that brought Mr. Brady here. He visited every dealer of hats in the city, and some of the members of the Clerks' Union accompanied him. To these dealers Mr. Brady explained just what he wanted and expected. As a result of his work a jobber last Wednesday signed an agreement with Mr. Brady to sell nothing but union hats in the future."

A. Never heard it before.

Q. Never heard that? A. No.

Q. That is in 1900 and you said that you were a regular reader of the Danbury News. Now we go on to the next issue of the Danbury News of some time in 1900. 6268

"Orange Hatters May Parade.

"According to reports the final details in connection with the settlement of the strike in the hat factory of F. Berg & Co., Forest Street, Orange Valley, have not yet been agreed to by both the firms and the representatives of the union journeymen hatters."

Q. Remember that? A. No.

6269 Q. "There is, however, hardly any doubt but that these details will be satisfactorily arranged this afternoon. The members of the Berg firm and National President John A. Moffitt, of the National Hatters of North America, with the officers of the Orange organization, were in conference last night and this morning. It is said that the most important point in dispute is in regard to how many men went 'foul' will be given union cards.

In hatters' language a man is 'foul' when he goes back on the union." You never heard it? A. No.

6270 Q. Didn't you ever hear of the Connett history, or the attempt to boycott the Connett factory? A. No, I never did.

Q. Well, I will read from the Danbury News of August 14, 1900. You remember you said you are a reader of this paper.

"Little Likelihood of Unionizing the Connett factory without an effort.

It was admitted at the headquarters of the union hatters upon Forest St., Orange Valley, this morning, that it now looks as though a strike in the factory of Eugene V. Connett & Co. in South Jefferson St. can hardly be

6271 avoided. National President John A. Moffitt of the United Hatters of North America told a News reporter that notice was served upon the Connett firm at its New York office on Thursday last, that unless it would agree to unionize its place of business by tonight a strike would be declared tomorrow."

Then it goes on considerably more about it; did you ever hear of that? A. No.

Q. Now I turn to the Danbury News for Aug. 17, 1900, under the heading "Orange Hatting Notes."

6272 It is believed that the strike in the making department of the hat factory of Brennan & Carr, on Wallace St., Orange, will be settled today.

The National officers have about settled the trouble in the making department in the Berg factory and this morning the Fair men went back to work. It is said that the non-union men employed in this factory will be allowed to go by easy stages."

"There is nothing new in the Connett factory dispute. All the men are at work and the union has not

retracted its statement that it will boycott all goods turned out from this factory." 6273

There is more of it. Did you read that? A. No.

Q. I will turn to Aug. 18, 1900, in this same Danbury News of which you are a regular reader.

"The Connett Matter"

Treasurer Maher of the United Hatters of North America arrived home last night from New Jersey, where, with the other national officers he has been for a week attending a meeting of the General Executive Board held in Orange Valley. This meeting resulted in the unionizing of the Berg factory last Saturday. 6274

That is only part of it; do you remember reading that? A. No, I don't.

Q. I turn to this same paper of which you are a regular reader, for Sept. 25th, 1900.

"Hatting in Orange.

"The Newark News last evening said the officers of the Orange Association of the United Hatters of North America, with the members of its executive committee and President John A. Moffitt, and National Director Timothy C. McCarthy of the national association, completed the final details this morning, in connection with the unionization of the E. V. Connett hat factory." 6275

I won't read the rest of it; do you remember reading that? A. No.

Q. Danbury News for Nov. 9, 1900.

"A Union Factory"

E. A. Mallory & Sons plant was unionized this morning."

Then it goes on about E. A. Mallory and the fines which the men had to pay. Did you read that? A. I think I read that or heard it anyway, at the time.

Q. Do you know whether you read that or not in the Danbury News? A. I think I read that in the paper too. 6276

Q. Then you knew your organization was engaged in attempts to unionize factories? A. I heard of that at the time when the shop was unionized.

Q. "Numerous attempts to unionize the factories of E. A. Mallory & Sons have been made within the last few years, but the conferences that have been held between the members of the firm and the officers of the

6277 Hatters' Association have not until now resulted in any agreement." Does that sound familiar? A. Well, I couldn't say whether it did or not.

Q. "These employees had left the union to work in a non-union factory, thereby breaking certain rules of the union and fines of various amounts were placed upon them before the officers of the Hatting Association agreed to take them back into the union ranks." This is a part of the same article. Did you read that? A. No.

6278 Q. Here is a long article with the head lines, "United Hatters sued, H. H. Roeloff of Philadelphia, wants $250,000 damages" from the Danbury News of April 9, 1902. I take it you never read that? A. No.

Q. April 10, 1902, from the Danbury News the same paper of which you are a reader, "The Roeloff Suit," and a long account of it; you never read that? A. I don't think so, anyway I will say no.

Q. I don't wan't you to answer unless you are sure of it.

6279 Q. Do you mean you don't recall, or you mean that you never read it? A. Well, I don't think I read it, because generally if it was a long piece I would skip it. I would read the items generally of the home news, and that would be the most of my reading.

Q. Well, you have said that you read articles in the paper, you thought, concerning your organization? A. I stated that one heading that you read there sounded very familiar, reading what they did about advertising the label, it sounded familiar, but when it got down into the article and it said anything about boycotts you didn't read that? A. I couldn't remember that I did.

Q. Here is the Danbury News of July 17, 1902.

6280 "After negotiations of several weeks duration the factory of Henry H. Roeloffs in Philadelphia was made a union only yesterday, when the necessary papers were signed, and the union label was placed in the factory," etc. Do you remember that? A. No.

Q. Now we come to the Danbury News for July 25, 1902, "After Loewe Factory.

The hatters union will attempt to unionize this plant.

The United Hatters of North America, which has recently unionized several of the largest hat factories in the country has transferred its operations to Danbury, and announces its intention of unionizing the factory of D. E.

Loewe & Co. President Moffitt, Vice President Lawlor and Treasurer Maher went to the factory and ordered all the union men employed there to quit work. The men did immediately as instructed, and the factory is now short handed in all departments." Did you read that? A. No. 6281

Q. The Danbury News of July 26th, 1902:

"The Loewe Matter.

The United Hatters induce non union men to leave the plant.

No agreement regarding the unionizing of the factory of D. E. Loewe & Co. has yet been arrived at between the firm and the United Hatters of North America. The Hatters Union is determined to unionize the factory the firm announces that it will continue to do business as before. 6282

Yesterday the officers of the hatters union removed all of the union men from the factory and several of the non union operatives. Today the officers went further and induced all of the non union men to leave. The officers decline to state under what conditions the men were induced to stop work. Today there are no men working in the factory."

Did you read that? A. No.

Q. The Danbury News for July 28, 1902.

"The Loewe Matter. 6283

Situation between firm and union unchanged today.

The situation at the factory of D. E. Loewe & Co. which the united Hatters propose to unionize, is unchanged today. A few men are working in one or two of the departments. Mr. Loewe said this morning that he intends to keep the factory in operation and has no intention of having it made a union one."

That is only a part of the article; did you read that? A. No.

Q. The Danbury News for August 20, 1902.

"Hatters Leave Town. 6284

Sixty five of Loewe Company's employees go to other districts.

About 65 hatters former employees in D. E. Loewe & Company's factory, left town this morning for other hatting districts. A dozen went to Yonkers, several went to Philadelphia, and the rest went to New Jersey.

These men were thrown out of employment by being called out from the factory by the officers of the United Hatters of North America which announced its intention a short time ago of unionizing the factory in question."

6285 Did you ever read that? A. No.

Q. Well, did you read any article after that in 1902, relative to your Hatters organization? A. I don't recollect of any.

Q. Yet you say you are a regular reader of the Danbury Evening News? A. Yes, I read the paper.

Q. You are willing to swear positively that you never read any of those matters? A. Not that I read. I have no recollection of ever reading them.

Q. Did you receive one of these warnings? A. Is this the warning that came from Mr. Loewe?

6286 Q. Yes. A. Yes, I think I received one of them.

Q. Did you read it in the Danbury News where it was published seven days? A. I don't think I did.

Q. Did you talk to anyone concerning this? A. Yes, I spoke to different ones and asked them what was the meaning of it.

Q. And did you talk with any other members of your trade concerning it? A. Why, yes.

Q. Did they say they had received one also? A. Yes, some that I talked to.

6287 Q. Did you talk to any of the defendants here concerning it? A. The defendants; that is us, on our side, you mean we are the defendants?

Q. Yes. A. Why yes, of the Hatters, I would be liable to talk to about it, and ask what it meant.

Q. Who did you talk to? A. I couldn't state anyone in particular, any one I might work in the shop with.

Q. That is, you discussed it with men in the shop, trying to find out what it meant? A. Trying to find out what it meant, yes, sir.

Q. Didn't the men say they had received one also? A. Some that I talked to, yes.

6288 Q. Let me see, you were working in the National at that time? A. I think it was the National Soft Hat shop, or the Danbury Company, I think it was the Danbury Co.

Q. When you received that notice or warninig, didn't you go at once to the Hatters Journal to see if you couldn't find out what they were doing? A. No.

Q. You saw from the notice of the suit that you would be held responsible for what your officers and agents were doing, and didn't you have any interest in finding out what your officers and agents were doing? A. I would, I sup-

pose, if I felt in any way guilty, but I didn't understand why I would receive a notice like that. 6289

Q. You know this was issued at the same time, or shortly after the Loewe men were called out? A. Yes, it was after the Loewe men were called out I received that notice, or I received any notice.

Q. You knew that, didn't you? A. Yes.

Q. And didn't you connect the calling of the men out of Loewe's factory with the agents of these united hatters? A. Yes, but I couldn't connect it with anything that I had done.

Q. It was a notice that you would be held responsible for what your officers and agents did? A. Yes, but I didn't understand how I could be held responsible. 6290

Q. You understood what it said? A. Yes, I read it and understood it in a way, and asked other people what it meant.

Q. And after receiving that warning, didn't you take any steps to find out what your officers and agents were doing? A. No.

Q. You did not after that time, particularly, direct your attention towards the articles in the paper in the Danbury News? A. No, I did not until the attachment was put on my place. 6291

Q. Now after this suit was started you continued a member? A. Yes.

Q. And continued paying dues? A. Yes.

Q. Made no protests? A. No.

Q. No effort to prevent the re-election of the same officers? A. Well now I scarcely ever attended any meetings, any hat meetings, as I told you before. I have been excused for 12 or 14 years, and I can testify positively during my life time I never attended a dozen hat meetings in my life.

Q. The question is a very simple one, whether you took any steps to prevent the re-election of the same officers? A. No, I don't think I did. 6292

Q. Well, do you know whether you did or not? A. I don't know because I didn't go to the meetings.

Q. You had an opportunity of going if you wanted to? A. Yes, I suppose I did.

Q. Now, let me see then, you received a notice from your union in regard to the employment of counsel? A. Yes I suppose I did I don't remember.

Q. You don't remember whether you did or not? A. No. But not to remember the time I received it, but a time

6293 afterwards, and from shorty afterwards I must have received one because I inquired and found out the union was going to take care of the thing.

Q. But you have no recollection now of having received such a notice? A. Not at the time.

Q. And you haven't no recollection of having signed any authorization? A. I haven't any recollection of signing any paper.

Q. And yet you think you must have done it? A. Why, I think I must because most of them did, that is the reason I think I must have done it, or agreed to it, or something.

6294 Q. Now let me see: your recollection is so hazy that you didn't know about this matter in 1903, but you are willing to swear positively that you never heard anything about the actions of the agents or your officers relating to boycotting during a period as far back as 1898? A. What is that?

Q. The Loewe trouble was in 1902. A. 1902?

Q. Yes. A. '92?

A. 1902. I have heard the boycott of late years, heard it talked a good deal.

6295 Q. 1898, I am taking a period of five years from 1898 down to 1903, and you testified as to the matter in 1903 in which you personally participated, or believed that you did, and you have absolutely no recollection, and are willing to swear that you never did read anything or hear anything about a boycott by your organization or any of the actions of your agents? A. No, not of our organization I never remember of reading that they were boycotting.

Q. By your organization you mean the United Hatters? A. Yes.

Q. Or the American Federation of Labor? A. Well, I never considered them our organization.

6296 Q. Did you hear anything about their being engaged in boycotting? A. No, I have not. The only boycott case I ever remember of was the Buck Stove case. Whether that was the American Federation of Labor or not, I don't know.

Q. I am talking about before the suit? A. Oh no, not before the suit.

Q. Are you testifying under the impression that if you have not any personal knowledge of these things, you cannot be held liable? A. That is what I supposed, but I have been told lately it is differently lately.

Q. That is all.

6297

ANDREW G. BROWN.

Sworn by the Clerk.

EXAMINED

By Mr. Beach:

Q. Where do you live, Mr. Brown? A. 479 North Main Street.

Q. How long have you lived in Danbury? A. 52 years.

Q. How old are you? A. 58.

Q. Married man with children? A. Yes, sir. 6298

Q. What local association of Hatters do you belong to? A. I did belong to both of them. Of course you can't belong to both at the same time.

Q. Well take it in 1900 to 1903, which local association did you belong to? A. To the finishers.

Q. How long had you belonged to the finishers prior to that date? A. '76.

Q. Since 1876? A. Yes, sir.

Q. Up to October, 1903, had you ever been a delegate to any convention? A. No, sir.

Q. Or held office in your local association? A. No, 6299
sir.

Q. Or in the United Hatters of North America? A. I did not.

Q. Where were you working in 1900 to 1903? A. At Mr. Lee's factory.

Q. Was it under that name, or did it go under another name? A. No, it was the Lee Hat Company I believe.

Q. That was a union factory? A. Yes, sir.

Q. Did you see in that factory copies of the Journal of the United Hatters? A. I certainly did.

Q. Were you a reader in the Journal of those days? A. 6300
I did not.

Q. Do you remember reading in the Journal of the United Hatters prior to October, 1903, anything about the officers or agents of the United Hatters of North America following the goods of Mr. Berg or his customers to prevent the sale? A. I did not.

Q. Do you remember reading anything in that Journal prior to October, 1903, concerning the officers and agents of the United Hatters following the goods of Henry H. Roeloff

6301 & Company for the purpose of preventing their sale? A. I did not.

Q. When did you first learn of any trouble in Mr. Loewe's factory? A. When I was served with the notice of attachment.

Q. You mean you didn't hear of that strike there until the papers were served on you in this suit? A. That is the first I knew of it.

Q. Up to that time did you have any knowledge that your officers were charged with following the customers of goods of Mr. Loewe to prevent their sale? A. I did not.

6302 Q. And up to that time did you know that the officers and agents of the United Hatters had been charged with following the customers and goods of any manufacturers for the purpose of preventing the sale? A. I didn't know any such thing.

Q. Were you ever conscientiously, did you ever conscientiously participate in any conspiracy to restrain the trade of any manufacturer? A. I did not.

CROSS EXAMINED

By Mr. Merritt:

6303 Q. Are you a regular reader of the Danbury News, or were you in 1902 or '03? A. No, sir.

Q. Did you read it at all? A. Not at that time, not for three or four years before or three or four years after that.

Q. What is that? A. There is about seven or eight years I didn't read at all.

Q. You didn't read it at that time? A. No, sir.

Q. Had you read it at all prior to that time? A. I read it.

Q. But you are positive you did not read it at all in

6304 1902 and '03? A. There was about ten years.

Q. You are positive? A. I am positive I didn't read it at that time, because I didn't have it.

Q. Let me read your testimony on your former trial in this case, under cross examination, according to this record: "Q. Did you read the Danbury News in 1902 and 1903? A. Yes, sir." A. I think there was a mistake there.

Q. You think there was a mistake about that, do you? A. If I said it at that time, I didn't mean it.

Q. Up to that period, that is, prior to 1902, you say you didn't read the Danbury News? A. I did not.

Q. For the period that is following that you did not read the Danbury News? A. It might have been three or four years. 6305

Q. Did any one read it to you? A. It was read in the house.

Q. Read to you? A. Not direct to me, no, not direct to me. Generally.

Q. What do you mean by not direct to you? A. There were three or four, might have been reading the paper. My daughter might be reading it to my wife and I wouldn't know what she was reading.

Q. You heard it read? A. Not direct, no. 6306

Q. You never heard it read, not to you? A. Not at that time

Q. Not during that period of years? A. Not that kind of news.

Q. I am asking about the Danbury News, I am not asking about any particular kind of the matter, I am asking you whether during that period of time you overheard the Danbury News being read from day to day? A. No, I did not, not from day to day.

Q. That is, you mean if it was read to you at all, it was an exceptional case? A. That is what it was. 6307

Q. You never heard it read, you never heard them read any of the matters in this paper which most directly concerned you, namely, the matters which concerned the organization of which you were a member? A. No, I didn't take no interest in it.

Q. What's that? A. I didn't take no interest in it.

Q. You took no interest in your organization? A. Not a great deal.

Q. Paid dues to it regularly? A. Yes, sir.

Q. Didn't you have any interest in whether your money was being used for proper or improper purposes? A. No, I didn't care. 6308

Q. Now you say you saw the journal lying around the factory where you worked? A. Yes.

Q. That means you saw them from time to time when they were issued, different months, lying around the factory? A. Oh I might see them once a year, or twice a year probably, that is all.

Q. Now let me see, you are testifying then it is only once or twice a year you saw them? A. Oh I couldn't tell

6309 at that time, not in '93, I couldn't tell if I see one in that year, I don't remember.

Q. You don't know how many you did see? A. I don't know whether I saw any.

Q. You don't remember how often you saw them? A. I couldn't swear to it.

Q. Your memory is not clear? A. Well I saw them around the shop, the steward would have them sometimes as they would be scattered around, there might be two or three, they might be there a week or two and they would be swept up and put in the waste basket.

6310 Q. What I am getting at is this, Mr. Brown; it is in evidence, I believe, that these journals were issued monthly during the years, during those years, and that it came to the factories every month and were left there in the rooms where you worked? A. I couldn't swear to it.

Q. Are you willing to swear that you didn't see these journals every month? A. No, I won't swear I did not see the journals, for I did see them.

Q. Are you willing to swear you did not see it every month, I say? A. I wouldn't swear I didn't see them every month.

6311 Q. Your memory is not clear on the point? A. I will swear I did not see them every month.

Q. Well every other month on an average? A. Well I won't say that either.

Q. What will you say? A. I probably saw them two or three times a year, or three or four times a year.

Q. Two or three or four times a year? A. Somewhere around there, oh, three or four times.

Q. Now didn't that apply also to the year 1902 when you were working, and where you were working? A. I don't know whether Mr. Lee would let them in the shop or not.

6312 They might have been there once or twice while I was working at that time.

Q. I want what your recollection is? A. No, I won't swear I see them there at all.

Q. Will you swear you did not see them? A. No, I won't swear I did not see them.

Q. How about the convention proceedings of the United Hatters, do you remember having seen those? A. Only when I was to the meeting.

Q. Only when you were at the meeting? A. Yes, sir.

Q. But you did see the printed convention proceedings at the meeting? A. A part of it was read while I was there, but I didn't stay until they read it all. 6313

Q. Part of the convention proceedings were read? A. I think so, or somebody was speaking, that I know sure.

Q. Isn't it a fact that some one who had been a delegate to the convention came there and made a report as to what had been done at the convention? A. No, not the one I was at.

Q. But you heard some one reading it before the meeting from the printed convention proceedings? A. I won't say whether it was in the Hatters Journal or what it was. It was a report of some kind. 6314

Q. Then let us go back to the original question; have you ever seen the convention proceedings? A. Not in the book or in the Hatters Journal, never.

Q. I am asking if you have ever seen the printed proceedings? They are printed by themselves? A. No, sir, I did not.

(Fifteen Minute Recess.)

Q. Now, Mr. Brown, let us see if we can understand each other; you went to a meeting and you heard something read? A. I am pretty sure I did. 6315

Q. Well you are sure you heard something read, and you thought it was the convention proceedings of the United Hatters? A. No it want.

Q. Well what was it, if you know? A. I couldn't swear what it was.

Q. Well you never have read yourself the convention proceedings? A. No, I did not.

Q. You knew there were such things, didn't you? A. No, I didn't know it.

Q. You didn't know there were such things? A. No I did not.

Q. Did you ever see them around the headquarters of your organization? A. No, sir. 6316

Q. Didn't you ever go down to headquarters? A. Oh when there was a meeting once in a while. I never have been in the headquarters, not to the regular office, only when I have to go on business.

Q. You testified you did not read the Hatters Journal? A. I did not read the Hatters Journal.

Q. Didn't read it at all? A. I didn't read it at all in fifteen or twenty years.

6317 Q. Well you have read it some then? A. The first two or three copies that was printed.

Q. You read the first two or three copies that was printed? A. Yes, I think so.

Q. Now let us look at some of those. We will read the first copy. A. I don't know whether it is the first one or the second one.

Q. Well look at it, we will look at any of them. Now the first copy was in August, 1898, and the editorials told about the Journal making its bow to the trade, and feels that it ought to outline what its mission is. "The work of an 6318 organization like the United Hatters covers a very large field, and in the semi annual reports it was impossible to give more than a brief outline the most important business done in the previous six months. From these reports no idea of the general work going on could be gotten, and many of our members felt dissatisfied as to what they thought were large expenditures for what was done."

That was in the first copy, perhaps you better look at the copy just a moment and see if it means anything to you. A. I remember seeing it.

Q. You do remember seeing that one of them? A. I 6319 am pretty sure it was in that year, I don't know whether it was that first one or not, I wouldn't swear to that.

Q. It was in the year 1898. Well, in those days it was not issued every month? A. I believe not.

Q. Don't you remember seeing this article about "Our Label"? A. It was the number of hatters when I looked at it that was in the trade.

Q. You didn't read this article about "Our Label," you didn't read this article about "Our Label"? A. No, I did not.

Q. You say you only read something in regard to the 6320 number of hatters? A. That is all.

Q. You remember distinctly what you read, do you? A. No I don't.

Q. As I understand it, you read the first two or three numbers, the very first two or three numbers, and you haven't read it since? A. No I haven't read it at all.

Q. Are you willing to testify, or I will ask you first, haven't you talked about your organization with the trade that worked with you? A. On the outside, not in the hall, on the outside, I might have asked them how trade was, or something like that.

Q. I mean haven't you talked with them concerning the Hatters Union? A. No. 6321

Q. Never talked with any one concerning the Hatters Union? A. No I did not.

Q. Now let me see if you understand the full significance of that statement; you are willing to testify that prior to this suit you never talked with any one in regard to the Hatters union, and you are a member of it, and there are several thousand members of it in your own town and Bethel? A. I have talked a little about it in '82 before I joined, before I belonged to it.

Q. But since '82— A. Since '82 I have not. 6322

Q. Down to the time of the commencement of this suit you never talked to anyone about the Hatters organization? A. I did not.

Q. You never read anything about it? A. About what?

Q. About the Hatters organization during that same period? A. No I never read anything about it. I know all about it. I knew it before that.

Q. You knew what? A. The organization of the Hatters before I belonged to the finishers at all.

Q. Well you didn't know what it was doing, you said. 6323
A. Not the finishers? I knew what the makers was when I belonged to them.

Q. What I am trying to get at is, what information you had concerning the operations of the United Hatters from 1882 down to 1903, and I understand your testimony that you never read a thing about that organization, and you never talked to any one about it during that entire period of time? A. I might have done, I wouldn't swear that I didn't. There is lots of things I have done that I don't remember that I done it.

Q. That is what I should think myself. A. Sure. 6324

Q. Now are you willing to testify that you never talked with any one about the boycotting operations of the organization? A. Yes, I will swear I didn't.

Q. You are willing to swear that no one ever talked with you about it? A. No, sir, there was nobody ever talked with me about it.

Q. And that you never read about them? A. No, I never did.

Q. You say there are lots of things you might have done and forgot, but you are willing to swear positively that

6325 you never heard or read anything about the Hatters union being engaged in preventing the sale of non union hats? A. I will swear that I didn't, I never read any of it.

Q. Or heard anything of it? A. Oh I might have heard it.

Q. You might have heard it? A. On the street, sure.

Q. You think you might have heard your organization was engaged in trying to prevent the sale? A. No I didn't, I never heard that. I might have heard men talking on the street about it, but I wouldn't butt in and hear what they were saying.

6326 Q. The trouble is you don't understand me always, and I want to know whether you have ever heard any one talking about the fact that your organization was engaged in boycotting? A. No I did not.

Q. Or preventing the sale of any non union hats? A. No.

Q. You are willing to swear positively to that? A. I will swear that I didn't hear it.

Q. And you say there are many things that may have happened that you have forgoten? A. I didn't say I forgot. I said I didn't remember. I said I didn't remember any one

6327 year, yes, there is lots of things happen that I don't remember.

Q. But are you willing to swear positively that you didn't hear these things, or do you mean that you don't remember now ever having heard of them? A. I never heard that they were engaged in any boycott whatever, I will swear to that.

Q. You never heard that they were trying to prevent the sale of non union goods? A. No, sir, I never heard it.

Q. And you are willing to swear to that positively? A. I am willing to swear to that positively.

6328 Q. Whereabouts do you live in Danbury? A. It is about a mile from the center of the city, 479 North Main Street extension.

Q. Was that your address in 1902? A. No, it was 477, next door.

Q. I see here in the directory of 1902 your name is "Andrew G. Brown, hat finisher, house extension Main." A. That is the place where I did live.

Q. That is where you lived in 1902? A. That is where I lived in 1902, yes, sir.

Q. Didn't you receive one of those warnings, Exhibit 86? A. I did. 6329

Q. Were you personally acquainted with any of the officers of your union in 1902 and '03? A. I knew Mr. Barrett, I wasn't intimate with him, I just knew him as an officer, that is all.

Q. Know any others? A. Mr. Shalvoy, yes.

Q. Any others? A. That is about all.

Q. Never talked with them about your organization? A. No.

Q. Do you recall that the assessments of your organization were increased in 1900? A. I remember they were. 6330

Q. Did you attend a meeting where the increase was discussed? A. No, sir, I was not to that meeting at all.

Q. Didn't you hear men report as to why the assessment was increased? A. I understood, I didn't know, but I understood it was for to help the trade, for the good of the trade.

Q. Well didn't you understand in what way they thought it would help the trade? A. I knew they had advertisers on the road and needed money.

Q. Then you knew this increase of assessment was made for the purpose of putting agents on the road, or maintaining them on the road? A. I couldn't swear to that, whether it was for that purpose, or whether it was for some other purpose. I understood it was for that. 6331

Q. You understood it was for that purpose? A. I took it for myself you know. I didn't ask nobody, I asked no questions at all.

Q. What did you draw that inference from? A. Why I suppose they were short of money and wanted to raise a fund for that purpose. I thought it was that. It may not have been that, I had an idea it was.

Q. As a matter of fact don't you suppose you were informed by some one at that time that that was the object of the assessment? A. No, because I didn't bother about any meeting for that year, or for a year pretty near. 6332

Q. I know, but your shop steward who collected it, didn't you ask him why your assessment was increased? A. No.

Q. You paid the increase without any question whatsoever, and you assumed it was for agents on the road? A. I supposed that was what it was used for, the money, and to pay other expenses.

6333 Q. You knew this then, there were agents on the road at that time? A. I didn't know as they had been called off, they had been on before that, and I didn't know as they had been called off.

Q. They had been on before 1900? A. No, I didn't know whether they were or not, I don't know.

Q. Well I thought you just testified that they were. You said, as I understand your testimony, that the assessments were increased in 1900, you were informed they were increased to maintain the agents on the road, and that they had been on the road at that time and for some time before

6334 that; is that correct? A. I don't remember when they increased that assessment.

Q. You have just testified a few minutes ago that you did remember the increase in 1900? A. Well there was another one after that I was thinking.

Q. There was another increase after that, was there? A. I think so, I ain't sure.

Q. And you don't want to change your testimony that there was one in 1900, do you? A. Now let me see, I won't swear to it that there was one of 1900. I know there was one after that.

6335 Q. You don't remember now whether there was one in 1900 or not? A. No I don't.

Q. When did you first learn that there were agents on the road? A. 1903 or '04.

Q. What? A. 1903 and '04.

Q. Didn't you know it before 1903? A. No.

Q. How did you learn of it? A. Because I heard them talking about it.

Q. Heard who? A. One of the men, they were talking about sending him because he was sick.

Q. Who was that? A. I don't remember now.

6336 Q. Don't remember his name? A. McCarthy, I think.

Q. T. D. McCarthy? A. I don't know his first name.

Q. Was he a Danbury man? A. I believe so, I wasn't very well acquainted with him.

Q. You are not sure whether his name is McCarthy or not? A. No, I know somebody spoke and said he was sick.

Q. How about Henry T. Scollen, is that the man? A. No, sir.

Q. Sure that is not the man? A. No, sir.

Q. Where was this man sent? A. I don't know as he was sent at all, I don't know as he got elected. They were boarding there, either a vote or a recommend, I don't know which it was now, to the National officers. 6337

Q. That is, your local was holding a meeting; where was the voting, or what voting was it? A. They were going to hold a meeting to send a delegate.

Q. That is, your local union? A. Yes, our local.

Q. And did you go to that meeting? A. No I did not.

Q. But you heard at that time that there were agents on the road? A. I did. 6338

Q. Didn't hear of it before that? A. No, sir.

Q. Now didn't you also hear what those agents were doing? A. No.

Q. Didn't hear anything about what they were doing? A. No, sir, I didn't hear no report, because I didn't go to a meeting, only one in two or three years.

Q. You had no idea what they were doing? A. No, I had no idea what they were doing, I didn't have no idea what they were doing.

Q. Do you want to rest on that statement? A. Yes, sir. 6339

Q. That you knew agents were on the road? A. I knew agents were on the road.

Q. It was being discussed whether you should send this man, and you hadn't the slightest idea of what they were doing, is that right? A. I knew they were advertising the label, that is all I thought they were doing.

Q. Why didn't you say so? A. I did, didn't I. I supposed they were advertising the label.

Q. Didn't you want to know what your officers were doing? A. No.

Q. Now after this suit was started did you continue a member? A. Yes, sir. 6340

Q. Paid dues? A. Yes, sir.

Q. You made no effort to prevent the re-election of the same officers? A. No, sir, I didn't go to the meetings at all.

Q. You were satisfied with the officers? A. I was satisfied.

Q. Willing to stand on the record of the organization? Mr. Beach:

That is objected to.

6341 Witness:

I was satisfied with what they were doing.

Q. All right. Did you receive a letter relating to the employment of counsel? A. Yes.

Q. Was it of the same character that you heard me read here? A. I have got it home now. You don't need to hire counsel, is that the one?

Q. Yes. A. Well I never signed it.

Q. You never signed it? A. No.

Q. But you have it home now? A. I have got it home now.

6342 Mr. Beach:

Suppose you send it here, will you?

Q. You mail it here, will you? A. I will if I can find it. I think I have got it in my trunk, I know I had one.

The Court:

You mail it to Mr. Beach.

Q. You testified in the last trial? A. Yes, sir.

Q. Your expenses were paid to come and testify? A. My days work was paid.

Q. And your expenses too, weren't they? A. Yes, I think so.

6343 Q. And you took no steps whatsoever to employ counsel? A. No, I did not, I didn't have to. I didn't have any interest, I didn't have nothing at interest.

Q. Although you are a defendant in this suit? A. I did once, but I didn't have none now.

Mr. Beach:

That is all.

GOTLIEB CHRISTION GARNER.

Sworn by the Clerk.

EXAMINED

6344 By Mr. Beach:

Q. You live in Danbury? A. Yes, sir.

Q. How long? A. Twenty years.

Q. Are you a member of the makers Danbury Union? A. I don't know what that is.

Q. What union are you a member of? A. What means that question? I don't understand.

Q. You are a union man; what union do you belong to? A. Oh, the hatters union.

Q. Makers? A. The makers, yes.

Q. How long? A. So long I stay in this country, 25 **6345**
years.

Q. Did you ever go as a delegate to any convention? A. Never.

Q. Elected an officer? A. No, sir.

Q. Of the union? A. No.

Q. Ever read the journal of the United Hatters? A. No, sir, well I cannot read English, I did not read it.

Q. What do you read, what paper? A. The German Morning Journal.

Q. The Journal? A. The Journal.

Q. That is a paper printed in German, is it? A. That **6346**
was not in this case the united Journal.

Q. The New York Journal printed in German? A. Yes.

Q. When did you first know of any trouble in the Loewe factory? A. I knew after it that the trouble was, but not before.

Q. Did you ever know before you were served with the writ and complaint in this case that the officers and agents of the United Hatters were charged with following Mr. Loewe's customers and goods to prevent their sale? A. I don't hear anything from this.

6347

Q. Or prior to October, 1903, that the officers and agents of the United Hatters were charged with following the customers and goods of any manufacturer to prevent their sale? A. I don't hear anything of this. I don't understand half what you say of this kind.

Q. Were you ever conscientiously a member of any conspiracy to restrain the trade of any manufacturer, Mr. Garner? A. No, sir.

CROSS EXAMINATION

By Mr. Merritt:

6348

Q. Why did you join the Union? A. What?

Q. Why did you join the union? A. The union? I was always to the union, I was in the old country to the union.

Q. You joined it when you came here? A. I came in the union right away as I come here in this country. I change my card from the old country when I was here in the union.

Q. Did you know that your union had agents that were going about the country? A. Not this time. After

6349 I hear after the trouble here, I understand not very much English, and I don't know much of this kind of trouble before. After the trouble I hear.

The Court:

Didn't you know about the union in Germany? A. It was different unions, it wasn't like here.

The Court:

Did they have a constitution and by laws? A. No, nothing, no, sir, it was more sickness benefit, such union you know.

6350 Q. Why did you join the union when you came to this country? A. Hatting.

Q. Well, you could work at hatting without belonging to the union, couldn't you? A. Oh, yes, I was working at hatting in the old country, and worked at hatting here right away as I come in this country.

Q. You understand what a labor union is? A. No, I understand better now, but not this time in this trouble.

Q. What did you understand a labor union was? A. Oh, a labor union, a union was workingmans belong together, what I understand from a labor union.

Q. That they all stand together? A. Yes, sir.

6351 Q. Stand by each other? A. Oh, I don't know nothing from boycott this time, what I mean is a labor union is what belonged workingman together, like any union, workingmans belongs together for our interest.

Q. So they can strike? A. Oh, strike, I wasn't coming in this country for a strike.

Q. But that is one of the objects of the union, isn't it, to strike if the employer won't give them what they want? A. I don't know, I can't say that.

Q. You don't know? A. No.

6352 Q. You have heard that the labor union conducted strikes? A. After the strike started I have to do what I can for it.

Q. No, but at the time before this trouble started, didn't you know that labor unions conducted strikes? A. No, no, sir, I don't know nothing before this was started. After, I know it after, I heard it, but not before it was started.

Q. You mean after this suit was started? A. I mean after the trouble from the Loewe case.

Q. Do you mean right after the strike took place in the Loewe factory? A. Yes, I mean after.

Q. You heard of the fact that they were trying to unionize the Loewe factory? A. I heard talk about that after, but not before. 6353

Q. You hear it right after the strike? A. Why, the whole city talked of this after the strike, that is what I know from the people talking. I heard nothing from the hatters, but talking all over in the city.

Q. After the strike took place? A. After the trouble yes.

Q. Then the whole city was talking about it? A. Why sure, I think everybody knows about it, what from Danbury comes. 6354

Q. You think everybody knew about it in Danbury? A. Sure, I think so.

Q. Did you receive a letter from your union in regard to the employment of counsel? A. I got that big book what I got, and once a letter, but I don't know what kind of a letter it was.

Q. Did you sign it? A. I got once a letter. If I see the letter I know it. It was after that date.

Q. Yes, and did you sign a letter and send it back to the union? A. I don't know for sure. I think everybody get that letter. 6355

Q. Yes, so do I, and you are still a member of the union, aren't you? A. Yes, I am.

Q. And you continued a member after this suit was started, and you have been a member always since you came to this country? A. Yes, I was always a member.

Q. Always been paying dues? A. I don't know what that means.

Q. You have been paying money to the union all the while, haven't you? A. Why sure, we have to pay what belongs to the union.

Q. Did you ever vote for any officers? A. I not go to a meeting, I don't vote for any officers. I don't know many mens, I don't know if he good or bad, I don't vote. 6356

Q. You have never voted for any one to the convention? A. I don't know what kind of a man they be, I don't vote.

Q. You never tried to find out what sort of men were your officers? A. No, sir, I don't go never to the meetings.

Q. Did you receive one of these through the mail, Exhibit 86? A. I got that once.

6357

JOHN PRIBULA.

Sworn by the Clerk.

EXAMINED

By Mr. Beach:

Q. Where do you live, Mr. Pribula? A. Germantown, Danbury.

Q. And your age? A. 49.

Q. You are a married man with children? A. Yes, sir.

6358 Q. How many of them? A. 10 of them.

Q. How long have you lived in Danbury? A. 28 years.

Q. You are a Maker? A. Yes, sir.

Q. And belong to the union? A. Yes, sir.

Q. How long have you belonged to the Union? A. 26 years.

Q. Where were you working from 1900 to 1903? A. For the Hoyt Messinger Co.

Q. Did you read English in those days? A. No, sir.

6359 Q. Did you see the Journal of the United Hatters in the shop where you were? A. No, sir.

Q. Then you didn't read it? A. No, sir, I couldn't read it in English.

Q. What paper do you read? A. Slavish, Hungarian.

Q. You couldn't read English at all in 1900? A. No, sir, I could not read. I couldn't read very good now, because I can't talk very good English.

Q. Were you ever a delegate to any convention? A. No, sir.

6360 Q. Or an officer in any union local or national? A. No, sir.

Q. Did you ever know that the officers and agents of the United Hatters were charged with following Mr. Loewe's goods and customers on the road to prevent the sale? A. No, sir.

Q. Or that the officers and agents of the United Hatters were charged, I mean prior to this suit? A. No, sir.

Q. Or prior to the suit that the officers and agents of the United Hatters were charged with following the goods

and customers of other manufacturers to prevent the sale? A. No, sir. 6361

Q. When did you first learn of any trouble in the Loewe factory? A. What say?

Q. When did you first learn of any trouble in the Loewe factory? A. When my property was attach.

Q. You didn't know anything about it until you were served with process in this case? A. I know nothing at all, I didn't hear of it at all.

Q. Were you ever consciously engaged in any conspiracy to restrain the trade of any manufacturer, Mr. Pribula? A. No, sir. 6362

CROSS EXAMINATION

By Mr. Merritt:

Q. Did you ever see the Journal? A. No, sir.

Q. Never saw the cover of it? A. Never, I can't read it, I have never read it.

Q. Didn't you ever see it around the factory where you worked? A. No, sir, never.

Q. Never saw them lying around the factory where you worked? A. No, sir.

Q. From 1900 to 1903 you worked at Hoyt & Messingers? A. Yes, sir. 6363

Q. Did you know that your organization held conventions? A. No, sir, I did not.

Q. Did you know there were Finishers? A. Yes, sir.

Q. Did you know there were Makers? A. No.

Q. What are you? A. Well, I am a maker.

Q. You are a maker? A. Yes, sir.

Q. Then you knew there were makers in the organization? A. Well, of course I knew it, but I didn't know very much about the convention, nothing at all. Of course I couldn't understand very good English, and I didn't go to very many meetings. 6364

Q. Don't answer my questions unless you understand them. You went occasionally to meetings you say? A. Not very often.

Q. Went some times? A. Some times, one in a year.

Q. Do you know who the officers in your union were? A. No, sir.

Q. Never knew? A. No.

Q. When you went to the meetings didn't you see who the officers were? A. Well, when I was there once in a

6365 year, of course I can see them, but I don't know their names.

Q. Did you ever hear of Mr. Shalvoy? A. No, yes I hear of him, but I don't know nothing about him, Mr. Shalvoy I don't know him.

Q. Ever hear of Mr. Moffitt? A. No.

Q. Never hear of Mr. Martin Lawlor? A. No.

Q. Ever hear of Mr. James P. Maher? A. No.

Q. Ever hear of Mr. P. H. Connolley? A. No, well I know him, but I never go down town very often with him, or hear anything from him.

6366 Q. These other men you say you never heard of? A. No.

Q. Never heard of Martin Lawlor? A. No.

Q. Did you pay money into the union? A. Yes.

Q. Did you ever inquire as to what the money was being used for? A. What do you say?

Q. Did you ever inquire what your money was being used for? A. No.

Q. You didn't care what the money was used for? A. Well, I care, I don't know.

Q. You didn't care what your money was used for?

6367 A. No, I don't be caring. I pay.

Q. Did you ever try to find out what your organization was doing? A. No.

Q. Didn't you care what your organization was doing? A. I know they would do nothing wrong for us, for me.

Q. You knew anything they did they were doing for you? A. That is it.

Q. Weren't you interested in knowing what they were doing with your money for you? A. Well, I didn't find out at all, I never ask it.

Q. Why didn't you? A. I don't know.

6368 Q. Didn't you try to find out? A. Well, I didn't know of it. Of course I never heard anything bad of them in the union, that is the reason I didn't find out.

Q. You never tried to find out whether they were doing what was proper or what was wrong? A. No, sir.

Q. Did you have a union card? A. Yes, sir.

Q. That is what you paid for, wasn't it? A. Well, I pay my percentage for my dues.

Q. And you are still paying dues? A. Yes, sir.

Q. And have been paying dues every year? A. Every year.

6369 Q. Have you ever taken part in the election of any officers? A. No.

Q. Well, after you were sued in this case didn't you try to find out what your organization was doing then? A. No, sir.

Q. Were not interested? A. No.

Q. Did you have property attached? A. I had property attached.

Q. Well, you knew your poperty was attached on account of things being done by the union, didn't you? A. Yes, no doubt about it, I didn't know what for, I didn't know nothing about it.

6370 Q. Why didn't you try to find out? A. I didn't want to bother.

Q. You didn't want to know? A. No.

Q. What is your answer? A. I didn't want to bother about it. I am a poor man and I not got so much money to find out what it was for.

Q. It wouldn't cost you any money to go down town and talk with the officers? A. Well, the officers, they don't say much.

Q. What? A. The officers don't do it, Mr. Loewe attach me. When I want to find out, I will go to him for it. 6371 I have got to go to him. The officers don't attach me.

Q. You knew your property was attached? A. I know it.

Q. Because of things which it is claimed were being done with your money, didn't you, didn't you know your property was attached? A. I know it.

Q. On account of things done by your organization with your money? A. Yes.

Q. Then why didn't you try to find out what your organization was doing? A. I don't want it.

Q. You didn't want to find out? A. How I can find 6372 out, when the rest of them didn't find out, how can I do it my own self alone?

Q. When the rest of them couldn't find out? A. Yes. When the property was attach I don't know what for, the property was attached I don't know yet what for it was attach, the property.

Q. Did you receive one of these notices, Exhibit 86? A. No, sir.

Q. What was your address in Danbury in 1902? A. What say?

6373 Q. What was your address in Danbury in 1902? A. Germantown, Danbury.

Q. That is outside the principal part of the town? A. Yes.

Q. Did you receive a letter from the union? A. No. sir.

Q. As to the employment of counsel? A. No.

Q. Sure you did not? A. Yes, sir, of course I never handle the paper, I can't read it.

Q. Did you sign any letter? A. No.

Mr. Merritt:

6374 I guess that is all.

FRANK KREBS.

Sworn by the Clerk.

EXAMINED

By Mr. Beach:

Q. Where do you live, Mr. Krebs? A. Danbury 12 Cook Street.

Q. How long have you lived in Danbury? A. Oh since 1884.

6375 Q. How old are you? A. I will be 50 next birthday.

Q. Married man with children? A. Yes, sir.

Q. You belong to the finishers union there? A. Yes, sir.

Q. How long have you belonged to it? A. Oh I think it was 1885 or '6.

Q. Have you ever been a delegate before Oct. 1903 to any convention? A. Never was in office in the union at all.

Q. Did you ever before October 1903, hold any office in the Local Union? A. No, sir.

6376 Q. Or in the United Hatters of North America? A. No, sir.

Q. Where were you working in 1900 and 1903? A. 1903? John W. Green or the Danbury Hat Co. I can't exactly tell. I worked there 10 years in the Danbury Co. I think, I think the Danbury Co. at that time,—

Q. Never mind saying any thing more you have answered the question. Did you see copies of the Journal of the United Hatters in the shop there? A. Yes, sir, I see them once in a while.

Q. Did you read them? A. No, sir, I couldn't read English. 6377

Q. When did you first hear of any trouble in the Loewe factory? A. I didn't hear anything except when the property was attached. That is when I heard the first, when I got interested in it.

Q. Do you mean you never heard any trouble at all in the Loewe factory until your property was attached in this case? A. I might hear it at the time when the men was called out that I knew what they were talking about. I didn't hear any trouble at that time.

Q. What was it you heard? A. Well, I heard they be out, I suppose, of Loewe's. 6378

Q. Did you know anything about any trouble there before you heard that the men were out? A. No, sir, I didn't bother my head about it.

Q. After the men went out and before this suit was brought against you or served upon you, did you or not know that the officers and agents of the United Hatters were charged with following Mr. Loewe's customers and goods to prevent their sale? A. I never heard that they did, not one. I heard they have agents to advertise the label, that is all I heard about it. That is what the idea was. 6379

Q. And before October 1903, did you know that the officers and agents of the United Hatters had followed or were charged with following the customers and goods of Berg & Co. for the purpose of preventing their sale? A. I never heard such a thing, no.

Q. I will ask you the same question, Mr. Krebs, in regard to H. H. Roeloff & Co.? A. I never heard anything about this business.

Q. Were you ever consciously a participant in any conspiracy to restrain the trade of any manufacturer? A. No, sir. 6380

CROSS EXAMINATION

By Mr. Merritt:

Q. Did you ever hear of the Roeloff suit? A. No, sir, only lately, what I heard in a way lately, yes. Before, I never knew of it.

Q. You were in Danbury how long? A. Since 1884.

Q. Always worked in a union factory? A. No, I worked in Mr. Loewe's shop.

6381 Q. What? A. I worked for Mr. Loewe for 3 or 4 years about 15 or 16 years ago, I can't exactly recall the time.

Q. You worked for Mr. Loewe? A. Yes, open shop.

Q. When was that? A. I should say it was about 14 or 15 years ago.

Q. How long did you work there? A. I couldn't say, I think it was over 3 years, either 3 years or 4, around there, I can't just say the time. Of course I think it was the year after that lockout was started, I think it 6382 was the year afterwards, I think I worked about 3 or 4 years at that time.

Q. And you never heard that a suit had been brought against the Hatters organization by H. H. Roeloff, never heard anything about that? A. No, sir.

Q. Did you ever discuss with the men working that were in the factories and the room? A. No, I don't think so.

Q. Don't think you ever did? A. No, sir.

Q. Went to the meetings occasionally you say? A. Once in a while, yes, sir.

6383 Q. You heard the affairs of your organization discussed at the meetings? A. Yes, sir, as I could understand, what I could understand about it.

Q. And you remember when the assessments were increased in 1900? A. Yes, they were increased once in a while, they changed the assessments I think.

Q. Well, didn't you ever inquire as to the reason for the increase of assessments? A. Well, I think at the time I never knew they had agents on the road, but I thought of course they had the benefit to pay, they had the money to pay off the men on the road to advertise the 6384 label, that is what I thought it was.

Q. Then you thought that the assessment was levied or increased for the purpose of paying off the agents on the road? A. That is what I understand.

Q. And I suppose you learned that— A. I heard that.

Q. —from some of the members of the Hatters Union, didn't you? A. Yes, sir, I heard it in the shop or in the meeting, I don't remember exactly where I heard it. That was my idea.

Q. Do you think that was explained to you at the meeting? A. I couldn't swear to that, I don't know if I heard it at the meeting or not, I might hear it and I might not hear it in the shop or in the meeting. 6385 1

Q. When did you first hear that you had agents on the road? A. Oh, I couldn't tell the exact time, only the last five or six years I should say.

Q. Well, you have already testified you knew in 1900, you knew there were agents on the road? A. No, I don't think that.

Q. Well, you said that you knew this increase of assessment in 1900— A. I thought it was for the purpose of maintaining agents on the road. I don't know when they increased the percentage I couldn't say that, I have forgotten all about it, only I paid 1, 2 or 3% whatever it was, when I would hear them talking about it, that is all. 6386 2

Q. Your memory is not very clear as to what happened in 1900 anyway, is it? A. I couldn't remember what has happened about that time, I don't bother my head about it at all.

Q. And these matters don't make much impression on you? A. Well, the first thing was my wife come home and we had about $100 in the bank— 6387

Q. Hold on, we will get to that in a moment, I am asking about other matters. As I understand it, you don't recall now whether or not there was an increase in assessment in 1900? A. I couldn't say it was or not now, I don't remember, I don't know what it be then.

Q. You know at some time there was an increased assessment to keep agents on the road? A. Yes, I know that.

Q. You don't know when that was? A. No, I don't know the exact time. 6388

Q. Do you know whether you went to any meetings in 1900? A. Oh, yes, I went to meetings off and on, but not often, that is, twice a year.

Q. There are only 3 or 4 meetings a year, are there? A. Yes, but I went once in a while in a meeting.

Q. Well, did you hear what took place at any of the meetings in 1900? A. Why, no, I couldn't remember that.

6397 Q. Did you try to have the agents recalled? A. No, I didn't think I could do anything.

Q. You didn't try, did you? A. No.

Q. You say you had a bank account attached? A. I did.

Q. And the Union paid for that the full amount of the bank account? A. The property was attached and they pay me the money, and the rest of it was not.

Q. What is that? A. They make the money free so I could get the $100 whatever it was, but the house they did not make free.

6398 Q. Did you sign any letter authorizing the employment of counsel? A. I don't believe I did, I couldn't say for sure.

Q. You don't remember? A. I think I did, but I wouldn't say if I did or not.

Q. I understand you think you did sign it? A. Yes.

Court adjourned until 10 A. M., Tuesday, October 1st, 1912.

Tuesday, October 1st, 1912.
Morning Session, 10:37 A. M.

6399 Witness,

MARTIN McGETTRICK,

Sworn by Mr. Carroll:

The Clerk:

Your full name? A. Martin McGettrick.

EXAMINED

By Mr. Beach:

Q. You live in Danbury, Mr. McGettrick? A. Yes, sir.

6400 Q. For how long? A. Thirty-four years—thirty-five.

Q. And your age? A. Fifty-three.

Q. Are you a married man with family? A. Yes, sir.

Q. What branch of the trade do you belong to? A. Hat making.

Q. You are a maker? A. Yes, sir.

Q. Belong to the Danbury Makers' Association? A. Yes, sir.

Q. And for how long have you belonged to that association? A. Since 1880.

Q. Since 1880? A. Yes, sir. 6401

Q. Were you prior to October 1st, 1903, a delegate to any convention? A. No, sir.

Q. Either of the United Hatters or the American Federation of Labor? A. No, sir.

Q. Did you ever hold office in your local union prior to October, 1903? A. No, sir.

Q. And what shop were you working in in 1900 to 1903? A. Mr. Lee's factory.

Q. Were you at that time a reader of the Journal of the United Hatters? A. No, sir; I never read the Journal; I never seen the Journal in any factory that I worked in. 6402

Q. Did you attend the meeting of your Makers' Association? A. Yes; once in a great while.

Q. I will ask you whether or not you remember reading in the Journal of the United Hatters anything about the goods and customers of Berg & Co. being followed by the agents and officers of the United Hatters? A. Never heard of it.

Q. And the same question in regard to Mr. Roelofs? A. Never heard of it.

Q. And the same question in regard to the plaintiffs, D. E. Loewe & Co.? A. Never heard of it.

Q. Prior to October, 1903, whether or not you were aware that the officers and agents of the union were charged with following the goods and customers of manufacturers of hats into other states for the purpose of preventing their sale? A. No, sir; I never heard of it. 6403

Q. At the last trial question was made as to whether you were present at a certain meeting of your union on April 12th, 1900, when some report was made in regard to the Berg matter; do you remember that incident? A. Why, there was a system that you could walk in and put your name in the box and get excused after you put in your name, and probably it might have happened that way. I don't—I never remember being any meeting where there was anything discussed about these factories. 6404

Q. The particular question is in regard to whether or not you recollect being present at any meeting where Mr. Berg was reported upon? A. I never was.

Q. That is, you were not there when that report was made, if you were there at all? A. No, sir.

6405 Q. And whether or not, Mr. McGettrick, you were ever consciously a participant in a conspiracy to restrain the trade of any manufacturer? A. No, sir; I never was.

Mr. Beach:

That is all.

CROSS EXAMINATION

By Mr. Merritt:

Q. What is a conspiracy? A. I couldn't tell you.

Q. How do you know you weren't a party to one then? A. What?

6406 Q. How do you know you weren't a party to one? A. How do I know?

Q. Yes, if you don't know what it is? A. That I never took any part in any as far as—

Q. (Interrupting.) Yes, but how do you know you never took part in a conspiracy, if you don't know what a conspiracy is?

Mr. Mulholland:

The question is whether he was knowingly a party.

Mr. Merritt:

6407 Well, if he doesn't know what it is it shows the ridiculousness these questions which call for a conclusion in regard to the matter.

Mr. Beach:

I think myself that the question is one which is intended to cover a very broad ground; but to save a lot of similar questions I think the question is answered when he says he didn't know that the goods of any manufacturer were being followed or that his officers were charged with it.

Mr. Merritt:

It shows that these gentlemen don't know, in many instances, what they are testifying about.

6408 Mr. Mulholland:

Well then, see.

Mr. Merritt:

He just said that he didn't; I asked him.

Mr. Davenport:

Does he draw his distinction between a combination described in terms and a conspiracy?

The Court:

You started off this morning talking among yourselves when no question is pending. Go on.

Q. Now do you understand the difference between swearing that you don't remember and swearing that you never did hear of such a thing don't you? A. No, I never remember of it; I am sure of it. 6409

Q. What? A. I am certain sure I didn't.

Q. Then let me see if you do understand me; your testimony is, not that you don't remember these things, but, as a matter of fact, you never did hear or read anything about them? A. Never did.

Q. You are testifying not according to your recollection, but you are testifying positively on that question? A. Yes, sir. 6410

Q. Now you know that in the records of this case we go back to 1896, concerning the boycott of the United Hatters; now you are willing to testify that even as far back as that you never heard or read anything about your organization being engaged in boycotting? A. Yes, sir; I am willing to take the thirty-three years I belonged to the organization, and I never heard a word about boycotting in the thirty-three years, except at this trial three years ago, and now. Them are the only times that I ever heard the word mentioned or used in my presence.

Q. Well you mean to say then that you never heard the word boycott? A. No, sir. 6411

Q. Until the last trial? A. No, sir.

Q. You know what a boycott is now? A. Why—

Q. (Interrupting.) What do you understand is a boycott? See whether we understand each other in regard to this testimony. A. Why, I don't understand what a boycott is. I don't know anything about a boycott.

Q. Well, have you ever heard that your organization was engaged in any attempt to prevent the sale of non-union goods? A. No, sir; never.

Q. Never heard that? A. Never. 6412

Q. Never read about that? A. Never.

Q. It never came to your attention by rumors or hearsay, or in any way? A. No, sir.

Q. Now it appears in the records of your local union that you were present at a meeting on April 12th, 1900, in which this report was made. "Mr. McGrath stated to the meeting that the stories going around that Berg & Co. were doing poor work was not so. He had been on the road for several weeks and had made a good success in having Berg's

6413 orders countermanded. He gave a good account of the work done by all of the men on the road, and felt sure that it would not be long until Berg gave in." Now, according to the records, Mr. McGettrick, you were present at the meeting when that report was made, and are you willing to swear that you were not present at that meeting? A. Yes, sir; I am willing to swear that I wasn't. Hold on a minute; at the commencement of a meeting men could go in and write their names and put them in a box, and it would show that they would be present, then you could get excused and go out if you had any particular business to do; that must be the way that must have

6414 happened.

Q. Now tell me the factories you were working in from 1898 down to 1903, as near as you can? A. From 1908?

Q. 1898 to 1903? A. 1898—Mr. Lee's.

Q. All that time? A. Yes, and now.

Q. From 1898 up to the time of the commencement of this suit in 1903? A. Yes.

Q. You worked at Lee's? A. Yes, sir.

Q. That was a union factory during all that time? A. Yes, sir.

6415 Q. And how many men were there working in the same room with you? A. Probably a hundred men.

Q. All members of your same organization? A. Yes, sir.

Q. Didn't you ever talk with those men at all about anything? A. Why, certainly.

Q. You conversed with them from time to time? A. Why certainly.

Q. Didn't you ever talk with them about your organization? A. Why, no; we never talked about our organization; I never heard it discussed.

6416 Q. Now let me see just what you are willing to testify to. You swear that during all that time from 1898 'till 1903 you talked with the men in your room, of which there were a hundred in all, you didn't discuss matters of the organization; you were a member of the same organization with them? A. It concerned the work.

Q. It related to the work which you were doing in the factory, yet you never discussed any matters whatsoever relating to your organization? A. Never.

Q. You are willing to testify that way? A. Yes, sir. **6417**

Q. Your recollection—memory is very clear? A. Yes, sir.

Q. And you are willing to swear that you never saw a copy of the Journal in that factory? A. Yes, sir; I am willing to swear to that. Never.

Q. Well, it appears from the record in this case that these Journals were distributed in that factory in the room where you worked and you still want to swear that you never saw them? A. In the plank shop?

Q. Yes? A. Never seen a copy of the Journal in the plank shop in thirty-three years. **6418**

Q. Did you ever see a copy anywhere? A. Why, I didn't not at that time in the plank shop.

Q. Did you ever see a copy anywhere? A. No, sir; not in the factory; I never go any place but the plank shop, and that place is very wet. It is no place for distributing copies of the Journal; they wouldn't be there five minutes but they would be all wet. I never seen any of them there.

Q. The plank shop is what you call the sizing room? A. You know what it is; yes, certainly.

Q. And it is where all the makers of the union do their work, isn't it? A. No, they are split up; finishers and **6419** makers.

Q. Will you listen to my question. Most of the members of the Makers' Union work in that room? A. Why, certainly, yes.

Q. There are very few outside of that room, aren't there of the Makers' Union? A. Very few.

Q. As I understand it, you swear you never looked into one of those Journals? A. Yes, sir.

Q. And you never talked with any of your fellow members about Berg or Roelofs? A. Never; I didn't know about them myself any more than the man in the moon. **6420**

Q. Never heard about the suit brought by Henry H. Roelofs against your organization? A. Never.

Q. Never read about that in any way? A. No, sir.

Q. Did you know you had agents on the road? A. I did.

Q. Where did you learn that? A. Where did I learn that?

Q. Yes? A. Why, I always knew that.

6421 Q. It has been so ever since you have been a member of the organization? A. No, sir.

Q. When did you learn of it and how did you learn of it? A. Why, I heard it discussed.

Q. Where? A. In the street.

Q. Among other members of your trade? A. Yes, yes.

Q. Then although you never discussed any matters relating to your organization with the men working with you, you have discussed the matter of your organization with men on the street? A. Why, that particular time I knew that

6422 there was agents on the road.

By the Court:

Q. What particular times was that, Mr. Witness? A. I couldn't tell you.

Q. About how many years ago? A. Why, it might be five or six years ago some time.

Q. And how long have you been a member of the labor union? A. Thirty-three years.

Q. I understood you to say that you always knew it; you didn't quite mean that then, that you always knew that they had agents on the road? A. Why yes I—

6423 Q. During the whole thirty-three years you mean? A. Well, of course they hadn't agents on the road for thirty-three years I believe.

Q. So you don't know now when you did first know about that; about the agents going on the road? A. No, I couldn't exactly say what the time was, but I knew that there was agents on the road of late years.

The Court:

Proceed, Mr. Merritt.

Examination resumed by Mr. Merritt:

Q. Don't you remember a special assessment being

6424 levied to send agents on the road? A. I know of special assessments being laid; I don't remember the time.

Q. Do you remember of any time special assessments being levied to send agents on the road? A. No, not of the time it was laid; I couldn't tell you.

Q. Could you tell whether it had been laid? A. Yes, I could.

Q. You knew special assessment had been laid to send agents on the road? A. Yes, certainly.

Q. You don't know when it was? A. No, sir.

Q. Do you know whether it was five or ten years ago? **6425** A. Yes, all of that time.

Q. It was, you think, at least ten years ago? A. Yes, more than that probably; I couldn't remember the time.

Q. And at that time it was explained to you that the object of that assessment was to send agents on the road? A. Why, no.

Q. How did you know then that the assessment was to send agents on the road? A. Why, there was expenses belonging to the Association besides paying their expenses.

Q. But you have testified here that you knew special assessment was levied to send agents on the road? A. No I **6426** didn't; no I didn't testify to that effect.

Q. Well, my recollection was? A. Probably it was to pay on their expense just as well as other expenses; I couldn't say, but I know there was lots of expense belonging to the organization.

Q. If you did testify you knew that there was a special assessment to send agents on the road you didn't mean it? A. I know there was a special assessment—an assessment was raised, but I couldn't tell whether it was to pay agents on the road or pay other expenses.

Q. After this suit was started you continued a member? **6427** A. Yes, sir.

Q. And you continued to pay dues and made no protest? A. I did.

Q. And made no attempt to prevent the re-election of the same officers? A. Why, the reason I kept on paying dues—

Q. Answer my question, and then you can explain all you want. You made no attempt to prevent the re-election of the same officers? A. No, sir, I didn't.

Q. Now tell me why you continued paying dues? A. **6428** Why because they pay a hundred dollars; the family get a hundred dollars when they die, and they get three hundred dollars from the National. That was four hundred dollars; that is the reason that I paid dues, and if you paid dues they got four hundred dollars of an assessment—or insurance money to bury them when they die; that is the reason that I pay dues.

Q. How much dues have you paid since 1903? A. I couldn't tell you how much dues I paid.

Q. Several hundred dollars haven't you? A. What?

6429 Q. Several hundred dollars, haven't you? A. I have not paid several hundred dollars.

Q. What steps did you take to employ counsel—did you receive one of these circulars? A. I did.

Q. And you signed it? A. I did.

Q. And sent it back to Mr. Connolley? A. Yes, sir.

Q. Did you have any savings bank account attached? A. No, sir; I haven't any; I have only a little home for the thirty-three years I have been in this country, and that not all paid for yet.

6430 Q. Your expenses were paid to come up here and testify in the last trial? A. Yes.

Mr. Merritt:

All right.

RE-DIRECT EXAMINATION

By Mr. Beach:

Q. I want to ask you about that plank shop, you call it, where you worked; won't you tell the jury what kind of a place that is? A. Why it is damp and the floors are damp; steam blowing in every direction.

Q. The work is done in hot water there? A. Yes, sir.

6431 Q. And these hats or cones that Mr. Loewe showed us are worked over in this boiling water, aren't they? A. Yes, sir.

Q. And the floor is all spattered with water? A. You have got to have hot water to heat your hats, and you have got to have cold water to cool off your hands; it is nicer to look to the body than it is to work in it.

Mr. Beach:

That is all.

Witness excused.

Witness,

6432 PATRICK FEELEY,

Sworn by Mr. Carroll:

Mr. Beach:

Patrick Feeley; that is right? A. Yes, sir.

Mr. Merritt:

Did you testify at the last trial? A. No, sir.

EXAMINED

By Mr. Beach:

Q. Where do you live, Danbury? A. Danbury.

Q. And for how long? A. Twenty-seven years. 6433

Q. Speak so all the gentlemen can hear you? A. Twenty-seven years.

Q. Are you a maker or finisher? A. Maker.

Q. Do you belong to the Makers' Union of Danbury? A. Yes, sir.

Q. How long have you belonged to that union? A. Twenty-seven—or twenty-six years, I belonged to the union.

Q. And are you a married man with children? A. Yes, sir.

Q. Where were you working from 1900 to 1903? A. 6434
Where was I working?

Q. Yes, what factory? A. 1903?

Q. From 1900 to 1903? A. I was in Hawes-Von Gal.

Q. In Von Gal? A. Yes, sir.

Q. That was a union shop, was it, then? A. Yes, sir.

Q. Prior to October, 1903, were you ever a delegate to any convention? A. No, sir.

Q. Of the United Hatters or the American Federation of Labor? A. No, sir.

Q. Did you ever hold any office in your local union? A. 6435
Never.

Q. Or in the national—United Hatters Union? A. No, sir.

Q. Were you, prior to October, 1903, a reader of the Journal of the United Hatters? A. No, sir.

Q. Do you remember reading in that Journal anything about Berg & Co.'s customers or goods being followed by the agents or officers of the union? A. No, sir.

Q. Do you remember reading anything to that effect about Roelofs & Co.? A. No, sir.

Q. Or about the plaintiffs, D. E. Loewe & Co.? A. 6436
No, sir.

Q. When did you first learn of any trouble in the Loewe factory? A. Why, when I first learned of it was when I got served with the attachment.

Q. You mean to say that you didn't know until your property was attached that there had been any trouble there at all? A. Well, Mr. Loewe sent me a notice.

Q. That is one of these notices or warnings that has been referred to here? A. Yes, sir.

Q. "Exhibit 86"? A. I couldn't tell what.

6437 Q. That is right, I think; and was that the only thing that you heard about the Loewe trouble before you were attached? A. That is the only thing, yes, sir.

Q. Did you ever know that the officers and agents of the United Hatters were charged with following the customers and goods of any maufacturers in other states to prevent their sale? A. No, sir.

Mr. Beach:

That is all.

CROSS EXAMINATION

By Mr. Merritt:

6438 Q. Did you ever hear or read that you had agents on the road? A. No, sir; I didn't.

Q. Did you ever hear or read that you had a label? A. That I had?

Q. That your union had a label? A. Why, I have seen it in the hats.

Q. Did you ever hear of it or read about it in any other way? A. Why, no.

Q. Never did? A. No, only that they had a label.

Q. Your only knowledge of the label is that you have seen it in the hats; is that correct? A. Yes, sir.

6439 Q. Speak up so we can all hear you? A. Yes, sir.

Q. Sure about that? A. I have seen it in the hats.

Q. That is all you have ever known about it is that you have seen it in the hats—speak up? A. That is all.

Q. Did you know that your organization owned it? A. Yes, sir.

Q. You assumed that, I suppose because you saw their name, United Hatters, on the label? A. Yes, sir.

Q. Didn't you know how your money was being spent, the money you contributed to the union? A. Yes, sir.

6440 Q. Well, how did you know? A. Why I knew that it went for a death benefit; if I died I would get enough money to bury me; that is all.

Q. That doesn't apply to the money with which you pay National dues, does it? A. Well—

Q. It don't have anything to do with the national dues, does it? A. What?

Q. The death benefit? A. Well, you get the death benefit from the National too.

Q. Oh, you do. Now, didn't you know that there was a defense fund? A. No.

Q. Never heard of such a thing? A. Never heard of **6441**
such a thing.

Q. Did you ever read the constitution of your organization? A. No, sir.

Q. Did you ever inquire as to how any of your money was being spent? A. Well, the only thing that I knew that it was spent for was we would get some money with the time of death.

Q. Didn't you know that additional assessments had been levied to provide for a defense fund? A. No, sir.

Q. Did you know that your label was being advertised? A. Well, I heard it was being advertised. **6442**

Q. Where did you hear that? A. What?

Q. Where did you hear that? A. Why I heard it on the street.

Q. Now, if you would attempt to answer the questions carefully and think about them you would save time; you testified a minute ago that you never heard anything about the label except that you had seen it in the hats; now you testify that you heard about it on the streets, that it was being advertised. I want you to give me all the information that you have, freely; now you heard on the streets that your label was advertised; did you hear that there were agents on the road **6443**
advertising it? A. No, sir; I didn't.

Q. You never knew that you had advertising agents? A. No.

Q. Did you ever read the Danbury News? A. Once in a great while; why I ain't got much of an education and barely can spell.

Q. You can read, can't you? A. Just by spelling it I can read a little.

A. Just by spelling why I could read a little; that is all.

Q. Well, now, didn't you ever see the Journal of the United Hatters in the room where you worked? A. Why, **6444**
I never seen it.

Q. Didn't you see any copies of it lying around? A. No, sir? I didn't never.

Q. I am not asking you whether you read it. I am asking you whether you ever saw one? A. I never saw it; never.

Q. Don't know what it looks like? A. No, sir; I don't. No.

(Mr. Merritt shows witness a copy.)

6445 Witness:

No, sir, I never seen that; never.

Q. Let me call your attention to this; these are all bound together; what I want to know is whether you saw one of these small ones (showing witness in bound volume the portion comprising one month's issue)? A. No, I didn't.

Q. Never saw one of them? A. No, not that I know; never did.

Q. What factory did you work in in 1900 to 1903? A. Hawes & Von Gal.

Q. That was a union factory? A. Yes, sir.

6446 Q. How many men were there working in the same room with you? A. Well, I couldn't tell you.

Q. Well, approximately. There were over fifty weren't they? A. Well, I couldn't say. I couldn't say how many there were there, because some days there would be more there than other days.

Q. Well, worked there always more than fifty? A. Well, there might be—in the room where I worked?

Q. Yes? A. No, sir.

Q. As a general rule? A. Why some times there might be thirty or forty and sometimes there might be less.

6447 Q. And they were all members of the same union that you were, weren't they? A. Yes, sir.

Q. And during those three years you never remember seeing a copy of that paper lying around in the room anywhere? A. No, sir; I didn't.

Q. Are you willing to say that you never did see one copy around the room there? A. Yes, sir.

Q. Which end of the room did you work in? A. Which end of the room did I work in?

Q. Yes; did you have to pass through the room to go to and from your work? A. I worked right inside the door.

6448 Q. Just by the entrance? A. Yes, sir.

Q. Did you confer with or talk with any of the men there about your organization? A. No, sir.

Q. Never did? A. No, never did.

Q. You are willing to swear that in all the time you worked there— A. (Interrupting.) No, sir.

Q. Although it is over ten years ago, that you never talked with any of the men in that room concerning your organization that you were supporting? A. I don't remember talking with any of them.

Q. Are you willing to swear that you never did talk with them? A. No, I couldn't; I wouldn't say that. 6449

Q. You can't tell, it is so far back? A. No.

Q. Did you attend any of the local meetings? A. No, sir.

Q. Now think of it for a moment; you haven't attended any local meetings? A. What do you mean?

Q. Any meetings of your local union? A. Oh, certainly, I attended meetings.

Q. Don't answer unless you understand me. You don't understand me always. That is all right.

Q. You did attend local meetings in 1900, 1901, 2 and 3? A. I might one or two. 6450

Q. Your recollection isn't sure as to whether you did or not? A. Well, it ain't.

Q. It is too long ago for you to remember? A. I never was any hand to go to meetings anyway. I generally stayed home, around the house.

Q. But it is too long ago for you to remember just whether or not you did attend meetings, is it not? A. Well, I don't remember that I did attend any.

Q. Well, can you swear that you didn't attend any? A. Can I swear that I didn't? 6451

Q. Didn't attend any? A. No, I can't.

Q. But you are willing to swear that you never heard or read anything to the effect that your organization had agents on the road? A. No, sir,—had agents?

Q. On the road? A. On the road?

Q. Well, I mean traveling around the country; you are willing to swear that you never read or heard anything to the effect that your organization had agents on the road advertising the label or doing anything of that kind? A. I heard they were advertising the label, but I didn't know how they were advertising it. 6452

Q. And you are willing to swear that you never heard that they had agents traveling around the country advertising the label? A. Agents?

Q. Yes; don't you understand me? A. No, I don't.

Q. You are willing to swear that you never heard that your union, or the United Hatters was employing men to go around the country and advertise the label? A. Going around the country to advertise the label?

6453 Q. Yes? A. Yes, I heard there were to be men advertising the label.

Q. Oh, you did? A. Yes.

Q. And you knew that these men were going around the country to different cities advertising the label? A. What?

Q. And you knew these men were going around to different cities advertising the label? A. Different cities?

Q. Yes? A. I didn't know where they were going.

Q. Well, didn't you testify that you knew they were going around in different parts of the country? A. I knew
6454 they were advertising the label, but I didn't know what way they were advertising it.

Q. Didn't you know that there were men going about the country in different places and advertising your label? A. I didn't know who was advertising it.

Q. Well, I understood you testified now a few minutes ago that you heard that there were men— A. I heard there was somebody advertising it, but I didn't know who they were.

Q. You knew that there were men going around trying to have union hats sold in place of non union hats, didn't you? A. Well, that is what I thought.

6455 Q. That is what you understood? A. That is what I understood that they were having men go around and advertise the union hat; that is all I know.

Q. And trying to get the union hat sold in place of non union hats? A. No, sir; I didn't.

Q. You didn't understand that? A. No, I didn't.

Q. Did you continue a member, paying dues, after this suit was started? A. Yes, sir.

Q. Did you have any saving bank account attached? A. No, sir; didn't have anything in the world only the little place.

6456 Q. Did you make any attempt to prevent the re-election of the same officers? A. No, sir.

Q. Did you make any protest? A. No, sir.

Q. Did you receive one of those letters from Mr. Connolley concerning the employment of counsel? A. Yes, sir.

Mr. Merritt:

By the way, gentlemen, is there any question as to the character of that?

Mr. Mulholland:

I think we can admit on the record, if the court holds it **6457**
competent, of course, over the objection, and it is taken subject to our exception, to save time, that the copy as read was a correct copy.

The Court:

Well, the court holds it competent only as matter of cross examination as to the accuracy of recollection or truthfulness of the witness's evidence in chief. If it was offered on the part of the plaintiff as a piece of evidence to sustain their theory of the case I should hold that it was immaterial.

Mr. Merritt:

Your Honor understands the letter that counsel referred **6458**
to; that it was a letter sent out by Mr. Connolley agreeing to take care of the case, etc., and any judgment in the case, and that these defendants—

The Court:

Well, now that, in addition to what I have already stated as to the view in which it may be received, is admissible as bearing upon the witness' interest in the case; that is the court and jury are entitled to know how much interest the witness on the stand has in it; if a judgment may hang over him then he has more interest than he would have if somebody else was going to pay the judgment; so that the interest the witness has **6459**
is a matter that the jury will take into consideration in passing upon his credibility.

Q. Where do you live in Danbury? A. 44 Stone Street.

Q. Is that in the center of the city? A. Well, it is pretty near; not in the center of it; but I am living 44 Stone Street, Danbury.

Q. You were living there in 1902 and '03? A. Yes, sir.

Q. But that is not part of the outskirts of the town, that is right in the midst of the town itself? A. Yes, sir. **6460**

Witness excused.

Witness.

FRANK K. WILDMAN.

Sworn by Mr. Carroll.

The Clerk:

Your full name? A. Frank K. Wildman.

6461

EXAMINED

By Mr. Beach:

Q. Your full name, Mr. Wildman? A. Frank K. Wildman.

Q. And your residence? A. 35 Locust Avenue, Danbury.

Q. How long have you lived in Danbury? A. All my life; fifty-one years.

Q. Are you a member of the Finishers' Union there? A. Yes, sir.

6462 Q. How long have you been a member of that union? A. Thirty-four years.

Q. 1878? A. I went at the business in '78; yes, sir. 1878. I haven't been a journeyman all that time. I served an apprenticeship.

Q. How long have you been a member of the Finishers' Union there? A. About thirty-one years.

Q. That would take it back to about 1881 then? A. Yes, sir.

Q. Prior to October, 1903, were you ever a delegate to any convention of the United Hatters or of the American
6463 Federation of Labor? A. I never was.

Q. Prior to that date did you ever hold any office in the local or national unions? A. No, sir.

Q. Where were you working in 1900 to 1903? A. Well, at several factories. I worked in Baird-Untied in Bethel, Hickson & Co., Beckerlee & Co., D. V. Connett & Co.

Q. Where is that? A. Danbury. Crofut & Knapp. South Norwalk; J. B. Murphy & Co.

Q. Was this all in those three years? A. I think so, yes, sir; and in the Lee Hat Co.

6464 Q. Now, were you a reader of the Journal of the United Hatters in those years? A. Yes, sir; I was.

Q. Do you remember reading in the Journal anything to the effect that the officers and agents of the United Hatters were following the goods of Berg & Co. in other states to prevent their sale? A. No, sir.

Q. Do you remember reading anything to that effect in regard to Roelofs' goods—in any effect whatever? A. No, sir; I never did.

Q. Or in regard to the goods and customers of Mr. Loewe? A. No, sir.

Q. When did you first hear of any trouble in the Loewe factory? A. Why, when the men came out; I can't just tell that date. 6465

Q. How did you learn of it? A. In the Evening News.

Q. You read about it in the Evening News, the News at the time that it happened? A. Yes, sir. Yes, sir.

Q. Up to the time this suit was brought and you were served with process did you or not know that the officers and agents of the United Hatters were charged with following the goods and customers of manufacturers in other states for the purpose of preventing their sale? A. I never did; no, sir. 6466

Mr. Beach:

That is all.

CROSS EXAMINATION

By Mr. Merritt:

Q. Have you ever been a delegate to any central labor union? A. No, sir.

Q. Or an officer thereof? A. No, sir.

Q. Or a delegate to any state federation? A. No, sir.

Q. Or an officer thereof? A. No, sir.

Q. Have you been at any meeting where you have voted, or others have voted, for delegates to a United Hatters Convention? A. I might have been, but I don't remember. I am not a very prompt attendant at meetings, and I couldn't say. 6467

Q. Do you remember whether or not you did attend meetings from 1900 to 1903? A. Why I might have done occasionally; not very often.

Q. Well, do you mean by that that you can't state positively whether you did or not? A. No, sir; I couldn't.

Q. What is that? A. I could not; no.

Q. Your memory is not good enough for you to testify positively on that point? A. No, sir; I couldn't. No. 6468

Q. But you are willing to testify positively that you never heard or read even for a longer period than that that the United Hatters had ever attempted to prevent the sale of goods of any manufacturer? A. I never did. I am willing to swear to that; yes, sir.

Q. Well, how can you explain, Mr. Wildman, that you are willing to testify in that way, although your recollection is not clear enough to make you willing to testify as to whether or not you went to any meeting and took action yourself per-

6469 sonally? A. Well, I never heard that discussed in any meeting I was ever at. I am willing to swear to that.

Q. I know, but you don't get the purport of my question. Can you explain why it is your memory is clear on one point in a negative way that you never did hear of any such thing, and it is not clear in an affirmative way as to whether or not you ever took any action yourself personally by going to any meeting? A. I am willing to swear that I never took any personal action in those things—no, sir.

Q. During the period from 1900 to 1903 you worked in a great many factories, didn't you, or a considerable number?

6470 A. Quite a number, yes, sir; just during that period.

Q. I suppose you have worked in the room with several hundred different members of your own organization during that period, haven't you? A. During those years you mention?

Q. Yes? A. Well, I wouldn't say it would amount—it would be in the hundreds, no.

Q. I mean in all the different factories you have worked in, you have worked in every one of them with a considerable number of your members? A. Yes, sir.

Q. Then you would go to another factory and work

6471 with an entirely new crowd? A. Yes, sir.

Q. And then go to another factory and work with an entirely different crowd? A. Yes, sir.

Q. And work in some rooms at the benches along side of them, didn't you? A. Yes, sir.

Q. Now, during all that time, didn't you ever hear any people make any statement as to what were the actual facts as to what your organization was doing, and what your money was being used for? A. Well, it is discussed in a general way but nothing definite is known as to where our money goes: how it is spent.

6472 Q. And during all that time you never heard anyone state that there was any attempt to prevent the sale of any non-union goods? A. No, sir.

Q. Now during that period of time you saw the Journals of the United Hatters from time to time in the room where you worked, didn't you? A. I saw it occasionally.

Q. And you read the Journal? A. A few times, yes, sir.

Q. Did you ever read any of the convention proceedings? A. I don't think I did.

Q. Well, are you sure about that, or is that one of the points that you don t want to be positive about? A. Well, I wouldn't be positive on that point; no, sir. 6473

Q. (Showing witness pamphlets.) There are the convention proceedings from 1900 and for 1903? A. Why, I possibly glanced through them, yes, sir.

Q. Did you ever read any of the reports of any of your officers? A. Why, I have glanced them over, yes, sir.

Q. In the Convention proceedings possibly? A. Why, yes; I think I have, in a light way.

Q. And in the Journal did you read any of the reports of your officers? A. No, sir; I never did. 6474

Q. Did you read any of the reports of the agents? A. Never did.

Q. Did you read any of the editorials? A. No, sir.

Q. Did you read any of the reports of the local secretary? A. No, sir.

Q. Or did you read—I think I have covered now everything in them? A. Well, I have glanced them through during the noon hour; I wouldn't have a great deal of time to read.

Q. I don't think there is a thing in them practically, or most of the numbers of it Mr. Wildman except what I have stated to you now? A. Well, I have read some articles; I couldn't say now just as to what they were. 6475

Q. But you are willing to swear that they never related to any effort to prevent the sale of non-union goods? A. Oh, I swear to that, yes, sir.

Q. Well, now, you were a regular reader of the Danbury News, weren't you? A. Yes, sir.

Q. And for all this period of time? A. Yes, sir.

Q. Now if there were any articles in the Danbury News relating to your organization, wouldn't you read them or read parts of them? A. Why, yes, I would, naturally would read them. 6476

Q. Well, it is in evidence in this case that issue after issue of the Danbury News reported practically these matters. Now how can you reconcile that with your statement that you never have heard of these matters relating to boycotting or an attempt to sell non-union goods? A. Anything in the Evening News in regard to that I never read it.

Q. Now, Mr. Wildman, don't you think, in view of the situation that you are in in regard to this matter that you read

6477 these Journals and they were full of these matters; that you read the Danbury News and they contained articles of this kind; don't you feel that it must be that you are mistaken and that these things must have come to your attention and you have forgotten them; don't you think that that really is the situation? A. No, sir. I testified that I attended meetings, but not very often. I wasn't a regular attendant at meetings.

Q. But you couldn't testify in 1900 and 1903 whether you attended? A. Why, I probably attended a few meetings; yes, sir.

6478 Q. Now don't you think, in view of the fact that you read the Danbury News in you believe that you read any articles there relating to your trade, and there are articles in there telling about boycotting, etc., that it must be you are mistaken as to having heard or read about boycotting? A. I never read anything about any boycotting in the Evening News.

Q. And you are willing to testify positively that you never read or heard about it anywhere in any way from any of the men you talked with or the Hatters Journal, or the Evening News or in any form whatsoever, during all this period of years you lived in Danbury? A. Concerning the Loewe business?

6479 Q. No, I am not asking for Mr. Loewe? A. In any line of boycott?

Q. Yes? A. Why, I have heard it discussed, the boycotting of goods, yes, sir.

Q. By your organization? A. No, sir; never did.

Q. That is what I meant by your organization? A. Never.

Q. And you knew that Trade Unions were engaged in boycotts? A. No, sir; I didn't.

Q. You never heard that trade unions were engaged in boycotts? A. No, sir.

6480 Q. Did you hear it discussed in any way that there were such things as boycotts? A. Why, discussions in other lines that there was such a thing as boycotting.

Q. You never heard that any labor unions were engaged in any boycott? A. No, sir.

Q. Did you read any other paper besides the Danbury News? A. Yes, sir.

Q. What other paper? A. The New York Journal.

Q. Were you a regular reader of that? A. Why, I read the Sunday paper, yes, sir.

Q. Do you remember whether you read in the Danbury 6481
News that the men had been called out of the Loewe factory? A. Yes, sir; I do remember reading it.

Q. Did you read that the officers of your union had called them out? A. I think I do, yes, sir.

Q. As I look at your testimony, you understood that the officers of your union where there in Danbury at that time for the purpose of unionizing the Loewe factory? A. Yes, sir.

Q. And had called the men out of the factory for that purpose? A. That is correct.

Q. Where did you say you lived? A. 35 Locust Ave., Danbury. 6482

Q. Is that in the town? A. Yes, sir, in the city; it is in the town.

Q. You were right in the midst of the city with other people? A. It is outside; it is on the outskirts of the city.

Q. Well, you are in the thickly populated part of the residential section? A. Yes, sir.

Q. Did you receive that warning from Mr. Loewe? A. It may have come to the house, but I don't remember it. I didn't see it.

Q. Your name appears in this directory "Frank K. Wildman, hatter, 35 Locust Avenue," was that your address 6483
in 1902? A. That is right; yes, sir.

Q. Did you receive one of these notices concerning the employment of counsel? A. Yes, sir, I did.

Q. And signed it and sent it back to Mr. Connelley? A. Yes, sir; I did.

Q. I take it you continued a member, paying dues, without any protest? A. Yes, sir.

Q. Took no steps to prevent the re-election of the same officers? A. No, sir.

Mr. Merritt:

All right, Mr. Wildman. 6484

Witness excused.

Witness,

EUGENE L. MULKIN,

Sworn by Mr. Carroll:

EXAMINED

By Mr. Mulholland:

Q. Your name is Eugene L. Muklin? A. Yes, sir.

6485 Q. You live at 14 Bennett Place in Danbury, Connecticut? A. Yes, sir.

Q. Are you a defendant, Mr. Mulkin? A. Yes, sir.

Q. What is your age? A. I am forty-five.

Q. And a man of family? A. Yes, sir.

Q. Did you ever work for Mr. Loewe? A. No, sir.

Q. Have you ever been in his plant? A. I think I have. I used to work in the next shop, and I think I have been in the plank shop.

Q. When did you first become a member of the Hatters' Organization? A. In 1886.

6486 Q. And what branch of it? A. Maker.

Q. In 1902 and '03 were you a member of the Danbury Makers' Union? A. Yes, sir.

Q. Where were you working at that time? A. E. A. Mallory & Son.

Q. In Danbury? A. Yes, sir.

Q. Prior to the time that process was served upon you in this case—that is your property was attached—did you know that the officers or agents of your organization were following the goods of employers or manufacturers into states other than Connecticut for the purpose of boycotting them?

6487 A. No, sir.

Q. Did you know of any trouble in the Berg factory? A. No, sir.

Q. Can you tell the jury where the Berg factory was located? A. No, sir; I couldn't.

Q. Did you ever hear of any trouble in the Roelofs factory? A. No, sir.

Q. Do you know where the Roelofs factory is located? A. No, sir; I don't.

Q. Did you ever hear or read that the officers or agents of your organization were following the goods manufactured

6488 in Mr. Loewe's plant into other states and boycotting the goods there? A. No, sir.

Q. Do you know what I mean by boycotting? A. Well, I never knew they were following them in any way.

Q. Do you understand what I mean when I use the word boycott? A. No, I don't know what it is.

Q. I wish you would tell the jury what you mean by the word "boycott" as near as you can? A. I don't know anything about it.

Q. That is did you ever know that the officers or agents **6489**
of your organization were going into states other than Connecticut and attempting to persuade or intimidate Mr. Loewe's customers concerning the buying of his goods? A. No, sir.

Q. I will ask you the same question in relation to Berg and Roelofs? A. No, sir.

Q. Or did you know that your officers were pursuing this line of conduct as against any employer of labor or manufacturer of hats? A. No, sir.

Q. You say you were working in the making department? A. Yes, sir.

Q. What were you doing there? A. Well, I was siz- **6490**
ing some of the time and some of the time blocking.

Q. How long did you work for Mr. Mallory? A. I think, if I ain't mistaken—I was looking at the book the other night home; I think it was some time in 1907 to—

Q. 1897 you mean? A. Yes, 1897 to 1904; in January, 1904.

Mr. Mulholland:

That is all.

CROSS EXAMINATION

By **Mr. Merritt:**

Q. Did you ever see the Journal of the United Hatters **6491**
in the factory? A. Yes, sir; I have seen it lying around the bench.

Q. In the make shop? A. Yes, sir.

Q. That is the same room that the other witness testified was too wet to leave them there, isn't it? A. It is the same kind of room, yes.

Q. Now did you read the Journal? A. No, sir.

Q. Ever look into it? A. Oh, just glanced at it; that is I saw it on the bench as I was going by.

Q. You knew it was the Journal of your organization? **6492**
A. That is what I understood it was, yes.

Q. And you knew it contained reports of your officers and agents? A. I suppose so.

Q. You assumed that it was placed there for the information of the members? A. I supposed so, yes.

Q. And you knew if you wanted to learn what was being done by your organization you could find out by looking in there? A. Why, I imagined that was what it was for. I am not much of a reader anyway.

6493 Q. You know how to read anyway? A. Oh, yes; I can read a little.

Q. I mean you are educated; you don't want to give a misunderstanding as to the facts of the situation? A. Oh, I can read some.

Q. There is no difficulty about your reading, is there? A. Oh, some words; there are some words that I don't—

Q. There are some words that none of us understand; but I mean you can read as most men in the factory read? A. Yes.

6494 Q. Did you ever see the proceedings of the convention of the United Hatters in the factory where you worked? A. No, sir.

Q. Sure about that are you? A. Yes, sir.

Q. You know what they look like? A. I never saw them that I know of; I don't know what they look like.

Q. Never saw them anywhere? A. No, never saw them anywhere.

Q. Then, of course, you couldn't have read them? A. No, sir.

Q. You are sure you never saw them in any factory? A. Yes, sir.

6495 Q. Now did you attend any meetings in 1900 and 1903? A. Well, yes, I imagine I did; I attended meetings; sometimes I would go to two or three and sometimes three or four meetings I won't go. I am not a regular attendant. I go sometimes.

Q. Well, you say you imagine you attended in 1903? A. I would sometimes; I don't know how many.

Q. You have attended some meetings from 1900 to 1903, that is what I mean? A. Yes, sir, I think I did.

6496 Q. Let's see if you attended a meeting, if you can recall, April 12th, 1900, where this report was made: "Mr. McGrath stated to the meeting that the stories going around that Berg & Co. were doing poor work was not so. He had been on the road for several weeks and had met with good success in having Berg's orders countermanded. He gave good account of the work done by all men on the road, and felt sure that it would not be long until Berg gave in"? A. No, sir.

Q. Don't remember that at all? A. No, sir.

Q. Well, will you swear you never heard it? A. Yes, sir.

Q. Will you swear you were not there when that man made that report? A. Yes, sir. 6497

Q. You know what he means by agents on the road, don't you? A. No, I don't know what he means.

Q. Never knew that your organization had agents on the road? A. Not any. I might have heard it on the street, or something like that, but not to know anything about it.

Q. Well, what I am getting at is not what you saw the men do personally, but it is what you might have heard or read? A. I say I might have heard it on the street.

Q. You might have heard it? A. Yes; I wouldn't say for certain. 6498

Q. You know today what that means, having men on the road? A. No, sir.

Q. You haven't any idea what he means by that? A. No, sir.

Q. Then, in connection with that statement which I read to you you haven't any idea what he meant by agents on the road? A. No, sir.

Q. You don't mean that today, do you? A. Yes; I say I might have heard it, but I don't remember of hearing it.

Q. And even today that means nothing to you, that "agents on the road"? A. I heard it at the trial; the other trial. 6499

Q. You know what it means now? A. Yes, sir.

Q. Now here is a meeting of April 19th, 1900, where Mr. Lawlor was present and gave a lengthy statement as to why the Board took the action they did in the Berg strike, as also did President Maher; do you remember that? A. No, sir.

Q. Did you ever hear Mr. Lawlor speak? A. No, sir; I don't think I ever did. I don't know but I might once; I wouldn't say for certain whether I did or not. 6500

Q. Did you ever hear Mr. Maher speak? A. Yes, sir; I have.

Q. You remember about Mr. Maher? A. Yes, sir.

Q. But you are sure he never talked about anything of this kind? A. No, sir.

Q. What was he talking about? A. Why, I have heard him speak when he was there; I don't know what it was now; I don't remember.

6501 Q. You haven't any recollection now as to what he talked about? A. No.

Q. Were you present when a report was made concerning unionizing Mallory & Son? A. I wasn't at the meeting, no. I was in Mallory's at that time though.

Q. You were in Mallory's when it was unionized? A. I was there, yes. I wasn't there that day. I think I was sick at that time for a week or two; but I was holding shop there at that time.

Q. Do you know what the fight was; after it was over I mean?

6502 Mr. Mulholland:

That is objected to.

A. No, sir; I couldn't tell you.

Q. Now at the meeting on March 6th, 1902, there was a long report made concerning the Roelofs strike; you weren't present then? A. No, sir.

Q. Were you present when any of your delegates from the Convention made their reports concerning the Convention? A. No, sir.

Q. Sure of that; did you ever hear of the Roelofs trouble? A. No, sir.

6503 Q. Did you hear that your organization had been sued for $250,000? A. No, sir.

Q. Never heard of the Berg trouble? A. No, sir.

Q. Never knew or heard or read that your organization had been engaged in any effort to prevent the sale of non-union hats? A. No, sir.

Q. Did you ever hear or read that your organization had been engaged in any effort to unionize factories? A. Well, I never read it as I know of; of course, I knew it through the Mallorys, and because I worked there.

6504 Q. Didn't you know that it was the special duty of your officers to use every means in their power to unionize factories? A. I supposed that was what they was there for.

Q. What did you suppose would be the means they would use? A. Well, I didn't know. Of course, I supposed they knew their business, and I didn't understand it myself.

Q. You knew you were a Labor Union member? A. I knew I belonged to a Labor Union, sure.

Q. What was your idea as to what means a Labor Union would use to unionize a factory? A. Why, I should suppose that they would go and ask the boss if he wanted to unionize it; I suppose tell him about the matter. That is all. **6505**

By the Court:

Q. Supposing he would refuse to do it, what then do you understand would be done? A. Well, in my way of thinking I shouldn't go any further. Of course I don't know what they would do.

Q. What do you understand would be done by your officers and agents? A. I never understood they would go any further; that is as far as I knew anything about. **6506**

Q. Did you feel any responsibility on your part to see to it that they did not go too far? A. Why, no, I didn't.

Q. Or did you have a feeling that you would leave it with your officers or agents to act in their best judgment? A. Yes; I imagine—

Q. Whatever they did you would stand by? A. Well, I supposed that they knew their business, that is what.

Q. You never did know exactly as to how far they would go in unionizing the factory? A. No, sir; I didn't. **6507**

Q. And was that the reason why, that you didn't know, that you left it entirely for them to handle? A. Well, I supposed they knew their business; of course, I didn't know what they would do; I couldn't say. I supposed that they would understand their business. I didn't suppose that they would do anything wrong, or anything of that kind. I supposed that they knew what to do and would do it the same as I would myself, if I was doing it.

Q. Well, did you have this understanding that it would be done by your officers and agents in such a way as they thought proper? A. Yes, such a way as they thought proper, yes. **6508**

Q. And you felt that it was no duty on your part to inquire into it and see whether they were doing it properly or not? A. No, I didn't.

6509

CROSS EXAMINATION

Resumed By Mr. Merritt:

Q. Now after this suit was started you knew then that your organization was charged with boycotting; did you continue a member, paying dues? A. Yes, sir.

Q. And made no effort to prevent the re-election of the same officers; made no protest against matters— A. No, sir.

Q. Set forth in the suit? A. No, sir.

6510 Q. Did you sign one of these letters authorizing employment of counsel? A. Yes, sir.

Q. Did you read the Danbury News? A. Yes, sir; once in a while. Not very often. I do read it.

Q. It is always in your house? A. Well, most always, yes.

Q. Now, as a matter of fact, if you were reading the Danbury News the matters which would interest you most would be the matters concerning your own organization in which you had a financial interest, wouldn't it? A. Well, I tell you; I didn't understand such things very

6511 fully, and I never read them much. I never was a reader or politician or anything of that kind, because I didn't understand anything like that; I couldn't read it, there is a lot of that stuff that I don't understand.

Q. Did you ever read anything about the union that you didn't understand? A. No, sir.

Q. How do you know you don't understand?

Q. Take this matter and see if you have any difficulty in understanding this: "Advertising hat label. United Hatters have spent thirty thousand dollars in two years for that purpose." Did you ever read that? A. No, sir.

6512 Q. You knew that money was being spent to advertise the label, didn't you? A. Why, I supposed so, yes.

Q. But you never knew there were agents on the road for that purpose? A. No, sir.

Q. "The Cleveland, Ohio, World, in an Article regarding the United Hatters says—" This is in the Danbury News for June 18th, 1900; a paper which you said you read occasionally "a lesson can be learned by the labor unions of Cleveland by the work for the union labels that is being done by the United Hatters of North Amer-

ica. A New Jersey concern recently refused to rec- 6513
ognize the union, and ever since the organization has been carrying on a wonderful fight against the concern. So far the hatters show every sign of whipping the employer, who is one of the largest manufacturers of soft hats in the country." If I come to any part that you don't understand just let me know. "They carry on quite a systematic fight and one that is telling. The union has perfected a secret service whereby we know just where every case of hats shipped out of the factory goes to, and keep it in sight until it arrives at its destination. Here the case is watched, and if it goes to a jobber every sale 6514
that he makes is watched and known. The organization has several agents out throughout the country who are fighting the firm. Twice has one of our agents, Mr. Brady, been in Cleveland. He is here now. The first time he was here he visited the labor organizations and told them of the fight and asked that none but hats with the union label be purchased. One of the jobbers to whom the New Jersey firm sold hats is located in Cleveland and it was this fact that brought Mr. Brady here. He visited every dealer of hats in the city, some of the members of the Clerks' Union accompanied him. To these 6515
dealers Mr. Brady explained just what he wanted and expected. As a result of his work a jobber last Wednesday signed an agreement with Mr. Brady to sell nothing but union hats in the future." It is perfectly clear to you in every way, isn't it? A. Why, as you read if off there.

Q. Well, this is a perfectly serious matter; some man takes the stand here and says he can't read very well, and some of these gentlemen testified to things which would show a very limited intelligence and you testify that you don't understand these matters. Now I want 6516
to know whether your intelligence is sufficient to understand these matters. Let me read another: "H. H. Roelofs of Philadelphia wants $250,000 damages." This is from the Danbury Evening News for April 9th, 1902: "United Hatters sued.

"Several Danbury men are defendants in a suit for $250,000 damages brought by Henry H. Roelofs the Philadelphia manufacturer against the officers and Board of Directors of North America. James H. Maher of this city is Treasurer of the Association. Patrick Lawlor of

6517 Bethel is Vice-President, and Charles H. Barrett and Martin Gorman of this city are members of the Board of Directors," and then "In the complaint it is alleged that the Hatters' Association entered into a conspiracy to injure the complainant's business by circulating disparaging circulars causing a libel to be printed in the Hatters' Journal and Boycotting his goods." And the day following there is another; you never read any of these things? A. No.

Q. You never heard of that important suit for $250,000 against the union of which you are a member?

6518 A. No, sir.

Q. Although it was published in this paper and many other papers? A. I never heard of it.

Q. And you never talked with anyone about it? A. No, sir.

Q. Let us boil this down; are you willing to swear positively that although you were in the factory at work with many other members of your organization and read occasionally the Danbury News that you never heard or read anything, or heard at any local meeting that you attended, or otherwise, to the effect as to what your or-

6519 ganization was doing? A. Well, I don't quite understand you; what they are doing. Of course, I say I attended some meetings.

Q. During all those years they were engaged in boycotting; that is what they were doing?

Q. During those years you never heard anything about matters of that kind? A. No, sir.

Q. Did you get one of those notices (Exhibit 86)? A. I think I did, yes, sir.

Mr. Merritt:

That is all.

6520 (Witness excused.)

Recess.

Witness,

JACOB PRINZ,

sworn by Mr. Carroll.

EXAMINED

By Mr. Mulholland:

Q. Your name is Jocob Prinz? A. Jacob Prinz.

Q. Where do you live, Mr. Prinz? A. I am living **6521**
in Danbury on Abbott Avenue, No. 12.

Q. Talk a little slow and they can understand you a little better? A. Yes, sir.

Q. Are you a defendant in this case? A. Yes, sir.

Q. How old are you Mr. Prinz? A. Fifty-five.

Q. And what nationality? A. German.

Q. Ten years ago how much English could you read? A. Not much. I can't read now anything very well.

Q. How much English can you now read? A. Not much.

Q. Did you ever work for Mr. Loewe? A. Yes, **6522**
sir; I did.

Q. And when? A. In 1882, I started in there.

Q. And how long did you work for him? A. About four—or to 1885; four years, I think.

Q. Do you now remember where you were working in the summer of 1902? A. Yes, sir; in Green's.

Q. How long had you been working in Green's? A. About two years I think.

Q. At that time? A. Yes, sir.

Q. Do you remember the time of the trouble which **6523**
occurred in Mr. Loewe's plant in the summer of 1902? A. I didn't.

Q. Well, after it occurred did you hear of any trouble or strike or men being out there? A. I don't remember anything; I was sick. I don't work.

Q. How long were you laid up sick during the summer of 1902? A. Oh, I have been six or seven months.

Q. How long were you off after you went to work? A. Oh, for a week or two I work and then I get sick again.

Q. Can you tell the jury about when you were first **6524**
taken sick; what month it was? A. I think it was 1902; I think it was along there. It was something around when I get sick.

Q. Now at the time you were home sick did you hear anything about the men having gone out at Loewe's? A. Yes, I hear them at the house.

Q. And that was in July, 1902? A. I think it was.

Q. Now prior to that time did you have any knowledge that the men were coming out of Loewe's shop? A. I didn't know anything about it before.

6525 Q. Mr. Prinz, you remember when papers were served on you in this case, and your property attached? A. Yes, I do. I think I get one.

Q. Prior to that time had you heard that the officers and agents of the hatters organization were boycotting anybody? A. I didn't.

Q. Do you know what I mean by boycotting? A. No, I don't; I don't understand it.

Q. You mean you couldn't define it? A. No, I don't know what it means, boycotting.

6526 Q. Well, did you hear that the officers and agents of your union were going out into states other than Connecticut and telling merchants that they must not buy goods of people who did not make union hats? A. No, I didn't.

Q. That is prior to the time that you were served in this case? A. Yes.

Q. Did you ever hear that your officers and agents were following Mr. Loewe's goods into other states and trying to prevent people from buying his goods? A. No, I didn't hear anything of that.

Q. Did you ever read the Hatters' Journal? A. No.

Q. Do you know what I mean by Hatters' Journal?

6527 A. Yes; I think I see them in the shop, only I never take any notice of them.

Q. You think you saw them in the shop? A. Yes, I think I see them in the shop.

Q. Did you ever read the Danbury News? A. Well I read the News only very seldom; I don't take any regular news.

Q. I mean take prior to the time that suit was commenced in this case? A. No, I don't get the News regular, I get what they call that Wednesday paper I take and that is about all what I have in the house.

6528 Q. You have a German paper too? A. Yes, I always have the German paper regular.

Q. Now at that time, ten or twelve years ago you couldn't read much English? A. No.

Q. What do you mean by that? A. Well, I never had no school. The little I know now I only been learn by myself you know.

Q. You took no lessons in English? A. No, I don't.

Q. How long have you been in this country? A. Since 1881.

Q. Prior to the time that this suit was commenced did you knowingly enter into any combination to destroy Mr. Loewe's interstate commerce? A. No. 6529

Q. Or, to get people out in other states to refuse to buy his goods? A. I don't know nothing about it.

Mr. Mulholland:

That is all.

CROSS EXAMINATION

By Mr. Merritt:

Q. You testified that in 1902 or '03 you didn't read the Danbury News? A. No, I didn't; I was sick.

Q. Or the Evening News? A. Well, the Danbury News I buy, you know once in awhile. I don't keep it always. 6530

Q. You were not sick during the whole period of 1902 or '03? A. Well, I was sick six or seven months, laid up, then I got to work again and I get sick again and I must say I am sick today; always got trouble with me.

Q. You are willing to testify that in 1902 and 1903 you never read the Danbury News? A. Oh, I may have looked in it; I won't say that—and that is about all.

Q. You took the Evening News? A. Didn't have it. Didn't keep it.

Q. Never read it? A. No. 6531

Q. You understand the English language? A. Oh, I can talk; that is about all. A little.

Q. You understand me perfectly? A. Yes, I do.

Q. You testified at the last trial, didn't you? A. Yes, sir, I did.

Q. And you understood the English language then, didn't you? A. Yes, I did.

Q. Now, according to the records of the last trial, you testified as follows: "Did you read the Evening and Danbury News in 1902 or '03? A. I did; yes."? A. I didn't say so. I don't think that I said so. 6532

Q. Now at the last trial you didn't testify that you never knew about boycotting, did you? A. I misunderstood you.

Q. Did you receive any of these letters or circulars in regard to the employment of counsel? A. I think I did.

Q. Now at the last trial you testified as follows: "What did you do about employment of counsel to defend this case? A. I did nothing about it"? A. That is it; I didn't.

6533 Q. What? A. I didn't.

Q. Well, you signed one of these letters and sent it back? A. I signed the letter.

Q. Now you worked in the make shop you said? A. Yes, sir.

Q. And you saw the Journals of the United Hatters in those make shops from time to time? A. No, I didn't say from time to time. I say I couldn't say what time.

Q. You saw them at different times? A. Yes, I think I saw them in the shop.

6534 Q. And this is the sizing room that has been testified about? A. That is the sizing room.

Q. Where they work in hot steam—water? A. Yes, sir.

Q. Did you ever read the Journal? A. No.

Q. You knew it was the Journal of your organization? A. Well, there must be something around there.

Q. And you knew it was put there for the information of members, didn't you? A. I couldn't say what it is in it; what it means. I know that is the Journal. That is all what I know. I don't know what it means by it.

6535 Q. Well, you assumed, didn't you that the purpose of printing these things in the Journal was to inform the members, didn't you? A. I think that is so.

Q. You think that is so? A. Yes.

Q. You then were not interested in learning anything about your organization? A. I didn't.

Q. Weren't you interested in knowing of the manner in which your money was being spent? A. Well, as far as I know they money question as I hear. I didn't read, only I hear we are paying it death benefits and the money what we are paying in there.

Q. You heard that your money was being used for that purpose? A. That is what I understand.

6536 Q. Didn't you know you had agents on the road? A. No.

Q. Didn't you know you had a union label? A. I know we had a union label.

Q. Didn't you know the label was being advertised? A. Well, I think the label we get in the hats I think advertise us.

Q. Didn't you know money was being spent to advertise the label? A. I didn't know about that.

Q. Never heard about that? A. No.

Q. In any way? A. No. 6537

Q. And never read about that? A. No, sir.

Q. And you never heard of the fact that your organization had a fight with Henry H. Roelofs & Co.? A. No.

Q. Never knew that your organization was sued for $250,000 by Henry H. Roelofs & Co.? A. I don't hear that.

Q. Never heard that they had any fight with F. Berg & Co.? A. No.

Q. Or never knew or heard or read in any way that your organization was engaged in trying to promote the sale of union hats? A. No. Nothing about it. 6538

Q. And never heard or read that it was engaged in trying to prevent the sale of non-union hats? A. I didn't know anything about it. Didn't hear anything about it.

Q. Now you know the difference between stating I don't remember, don't you, and stating that I absolutely never did hear of these things? A. I don't think I ever heard it; no, sir.

Q. You mean you are not sure? A. I am sure of it.

Q. You are positive that you never heard any of these things? A. No, sir.

Q. How long have you lived in Danbury? A. Since 1881. 6539

Q. Now you heard that the men were out of the Loewe factory, didn't you? A. Yes, I hear it at the house.

Q. You heard that they had been taken out by the officers for the purpose of unionizing the factory, didn't you? A. I don't know if I did or not; I can't remember.

Q. You can't remember that? A. No.

Q. Did you get one of these warnings, Exhibit 86, did you get one of these? A. I don't know if I did or not; I couldn't say.

Q. You don't remember? A. No. 6540

The Court:

What was the date of that?

Mr. Merritt:

August 23rd, 1902.

Q. Where did you live in 1902? A. I am living at the same place yet, where I am living now, on Abbott Avenue, outside of the city limits.

Q. "Jacob Prinz, Abbott Avenue, hatter"? A. Yes, sir.

6541 Q. You never heard anyone speak of receiving any of these warnings or notices? A. No.

Q. You never read them in the Danbury News? A. I didn't.

Q. Well, now, after you were sued you continued a member? A. Yes.

Q. Paying dues? A. Yes; yes, sir.

Q. And you made no protest? A. No, I didn't.

Q. Took no steps to prevent the re-election of the same officers? A. No.

Q. Did you ever remember a special assessment be-
6542 ing levied to put agents on the road? A. Not what I know.

Mr. Merritt:

All right.

Mr. Mulholland:

That is all.

Witness excused.

Witness,

JOHN SPENDLOVE,

sworn by Mr. Carroll.

6543 The Clerk:

Your full name? A. John Spendlove.

EXAMINED

By Mr. Mulholland:

Q. S-p-e-n-d-l-o-v-e? A. Yes, sir.

Q. Where do you live, Mr. Spendlove? A. South Norwalk, Connecticut.

Q. And at 9 Grove Street in that town? A. 9 Grove Street, yes, sir.

Q. You are a defendant in this case? A. Yes, sir.

6544 Q. What is your age? A. Sixty-five years.

Q. Can you tell the jury when you first began working at the Hatters' trade? A. Well, to the best of my knowledge I think it was about 1880.

Q. What was your occupation prior to that time? A. I worked in the Locke factory, straw hat factory.

Q. When did you move to Norwalk? A. I came to South Norwalk after receiving my discharge from the army in 1865.

Q. And how long were you in the army? A. Three years.

Q. That is in the Civil War? A. Yes, sir. 6545

Q. Then you have been in Norwalk ever since the Civil War? A. Yes, in the neighborhood of forty-seven years.

Q. What branch of the hatters' trade did you work at? A. Shipping and packing.

Q. And can you teell the jury in what plant you were working in 1902? A. 1902 I was working for the Dreyer Hat Co. where I am working now.

Q. How far is South Norwalk from the City of Danbury? A. I should say about twenty-two miles.

Q. Do you know Mr. Leowe? A. No, sir; never 6546
heard of him until I received summons in this suit.

Q. Never heard of him did you? A. No, sir, I didn't.

Q. Well, prior to the time that you were summoned in this suit, did you ever hear or read that the agents or officers of the Hatters' organization were conducting boycotts in states outside of Connecticut? A. No, sir; I didn't.

Q. Do you know what I mean by boycott, in a general way? A. In a general way, yes, sir; I think I do.

Q. Well, I am referring to this situation; did you ever hear or know prior to the time that you were sum- 6547
moned in this case that your agents and officers were following the goods of hat manufacturers into other states and attempting to coerce or persuade the customers of this manufacturer not to buy his goods? A. No, sir; I didn't; and if they were, another thing, I don't think they had any authority whatever to do it.

Q. Did you ever hear of the Berg trouble? A. I have heard of it; yes, sir.

Q. That is to what extent have you heard of it? A. Well, I heard there was trouble in the factory there; I think they were located near Boston.

Q. Well you are several hundred miles from the lo- 6548
cation? A. Well that is what I thought.

Q. Did you know where the Roelofs plant was located? A. Philadelphia, I believe.

Q. Did you hear of any trouble over there? A. I heard of the trouble but what it was I couldn't say.

Q. Now in connection with either of these companies did you ever hear of any boycotting or following of their goods into other states to prevent their sale? A. No, sir; I didn't.

6549 Q. Prior to the commencement of this suit, Mr. Spendlove, were you knowingly a party to any conspiracy or combination to boycott the goods of Mr. Loewe or interfere with his interstate commerce? A. No, sir; I have always been entirely opposed to any boycotting or anything of that line.

Mr. Mulholland:

You may take the witness.

CROSS EXAMINATION

By Mr. Merritt:

6550 Q. Now, as I understand it, Mr. Spendlove, you testified that you didn't think your officers had any authority to conduct any boycott, etc.? A. No, sir; I didn't.

Q. Now let's see what you know about their authority, and what you know about your organization; if you form an opinion on that knowledge I suppose you know something about it? A. I ain't formed any opinion any more than this. I judge about boycotts when you speak of it you say the agents on the road go out. They go out to use that label for the purpose of selling union hats and if they exceed that authority, I think they are exceeding—they are going beyond their limit.

6551 Q. Now let's see, you read the Journal regularly? A. No, sir; not regularly.

Q. You read the reports of the agents? A. No, sir.

Q. You never read the reports of the agents? A. I don't know as I ever read the reports of the agents.

Q. You knew they appeared in the Journal? A. I suppose they do.

Q. You knew they did? A. I knew there were reports in the Journal, but just what reports I couldn't say.

Q. You knew these Journals were printed by your organization, didn't you? A. Yes, sir.

6552 Q. You knew they were circulated generally among members? A. They were circulated among members in different departments of the shop.

Q. Now you knew, didn't you, that your organization had conventions? A. Yes, sir.

Q. And you knew that these convention proceedings were printed and published? A. I suppose so; yes, sir; in fact I know they are, having seen the convention reports.

Q. You read them occasionally? A. Well, once in a while I did.

Q. Once in a while you have read them? A. Yes, sir. 6553

Q. You knew this convention at times amended the constitution, didn't you? A. I supposed it did; that it transacted all business that was necessary to be done.

Q. You knew you elected delegates to go to the convention and carry on the affairs of your organization, didn't you? A. If I happened to be at a meeting—if I was probably to a meeting I would have voted.

Q. You knew that this convention was conveyed to carry on the affairs of your organization? A. Yes, sir.

Q. You knew they were the law making body of your organization, didn't you? A. Yes, sir. 6554

Q. And you knew that the action of this convention was the action of your association, didn't you? A. Well in some cases it might and might not be.

Q. Well, I mean anything that was duly voted upon and passed by your convention was the action of your association, wasn't it? A. Well, I suppose it was.

Q. Well, here is Article IV, Sec. 3, of your own constitution: "The proceedings of all regular conventions shall become a law immediately on the final adjournment of said convention, and shall remain so unless repealed by a two-thirds of the representation of the local association in the manner as herein provided for." So that all proceedings of your conventions are the law of your association? A. I see it is according to that. 6555

Q. And then Article IV, Sec. 1 says "The regular sessions of this association shall be held every four years." That is the convention, isn't it? A. Yes, sir.

Q. And the conventions are the regular sessions of the United Hatters of North America, aren't they? A. The United Hatters, yes, sir.

Q. And if you knew that the proceedings of the convention of the United Hatters were the law of your organization then you knew that these proceedings determined the authority of your officers, did you not? A. Yes, sir. 6556

Q. Then if you wanted to know the authority of your officers you had to look in these convention proceedings, wouldn't you? A. I would; yes, sir.

Q. And you say you have looked in them? A. I have once in a while, but very seldom. In my line of work I never had any time to read anything of that kind.

6557 Q. You say you didn't think that your officers had as much authority as this; how did you form that opinion? A. That was only my opinion.

Q. How did you inform that opinion if you didn't read the written documents showing the authority of these officers? A. I merely say that is only my opinion that if they did that they exceeded their authority. I didn't suppose they had that authority, but I see, under the constitution, they have.

Q. You think it appears in your convention proceedings that they had that authority? A. Yes.

6558 Q. So that what is done by your conventions is done by the authority of your association? A. Yes, sir.

Q. And they are binding upon you?

Q. Is that your understanding? A. That is my understanding; yes, sir.

Q. Now in the 1903 convention I wonder if you didn't read from the report of Mr. Moffitt. He refers to the Roelofs fight and says that he was given full authority to protract the struggle and fight the battle to a finish, the board of directors empowering the expenditure of money, etc., and he goes on: "Profiting from the experience in former fights

6559 a campaign has been inaugurated against the Roelofs concern through agents on the road working upon the jobbers and dealers with whom the firm do business, while the operation of the factory and the employment of men was left without interference. Our agents visited the northwestern states, also Ohio, Illinois, Iowa, Massachusetts, California and Texas. Literature and correspondence were used in the campaign and wherever Roelofs hats reached a market appeals were made to those with whom the firm did business to aid in our fight for principle by demanding the union label in all hats, with hearty and willing response. Trades unions

6560 everywhere rallied to our aid and the outcome of this fight, although prolonged to a duration of fourteen months was never in doubt. To enter upon a detailed narrative of the Roelofs fight would be trespass upon the time of this association, occupy the hours that may profitably be devoted to other use in consideration of problems to be faced in the future and serve no good purpose. Jobbers and wholesalers in every part of the country waited upon by our agents, or apprised of the situation by circulars and letters, met us fairly, and as a rule gave fair hearing to our cause; a majority following up such action by refusing to handle the product of the

factory until such time as our demands, which were generally conceded to be fair and liberal were complied with. Of the excellent work done and the results obtained by our agents who went out on the road in this fight too much praise cannot be spoken. The reports of their work published in brief form in the Journal from time to time should have been read by every member of the organization, and gave a good idea of their methods and labors." And then he goes on saying "Under the direction of the General Executive Committee your President attended the Convention of the Federation at Scranton of the American Federation of Labor, and with the assistance of our delegates had that body pass this resolution." And without reading all the whereases I will read the closing "Resolved that we call on all the international, national and local unions affiliated with the American Federation of Labor to give all the assistance possible to the United Hatters of North America in the unequal fight which they are at present so manfully making against wrong and oppression; and we hereby pledge ourselves not to patronize any dealer or dealers who handle the product of non-union hatters, and more particularly the product of the firm of Henry H. Roelofs & Co. of Philadelphia, Pa. The adoption of this resolution was followed up by the action of the convention in declaring a general boycott upon the product of the Roelofs factory." Then he goes on to state "The effect of this action was almost immediately apparent throughout the country. Similar action was taken by local trades and councils, and it is not too much to say that the final settlement of the strike would have been much more difficult but for the co-operation and assistance thus secured." Then he gives the complaint in the suit brought by Henry H. Roelofs & Co. for $250,000 damages, stating that the complaint alleges that by these measures they have been injured to that extent; and then Mr. Moffit says: "My principal reason for presenting so much of the text of this remarkable document to you is to show you to what extent and how effective the means adopted by your officers and approved by your Directors and Executive Board have proved in the conduct of our fight to compel the adoption of union conditions in the Roelofs factory."

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I read you one thing more, going on further he says: "The only other strike of importance since the last convention, that is of more than passing importance, has been one now being waged against the non-union firm of D. E. Loewe & Co.

6565 of Danbury. This fight was inaugurated soon after the conclusion of the Roelofs fight for reasons almost identical. Loewe refused to treat with the organization—to even confer with your officers—and has been quoted as asserting that he would die before he would make terms with the union. It is unnecessary to say more about this fight at present than that it is progressing satisfactorily and there is every prospect of its being concluded as successfully as have been the other fights of like nature we have prosecuted in recent years."

Now I call your attention to that report of Mr. Moffitt and to the fact that that report was adopted and approved; that
6566 Mr. Moffitt was re-elected, and I will ask you then if, according to your testimony, it is not true that your officers and agents had authority to conduct these boycotts?

Mr. Mulholland:

Objected to.

A. Why, according to that convention they had.

Q. Yes, and you say that the Convention laid down the laws of your organization? A. According to the constitution and by-laws, it does.

Q. What is that? A. According to the constitution I say it does. I wasn't aware of that point.

6567 Q. Well, then, we have here your statement that you didn't think your officers had any authority to do this, and now, according to your testimony, this is determined, the authority of your officers—

Q. Now you read the Journal from time to time? A. I say I have glanced at it, but I can't recollect what I have read at the time. Once in a while I would go into the curling room and as I would pass through the curling room I would look at it and I would go right on.

Q. You don't remember what you read in it? A. No, I don't.

6568 Q. You don't remember whether you read anything about boycotting? A. I don't; no, sir; I can't recollect being a number of years.

Q. What newspapers do you read? A. The New York papers generally.

Q. Did you read any of the local papers? A. Oh, once in a while I read the South Norwalk Sentinal or the Hour.

Q. Didn't you read in those papers some reference to your organization, or what it was doing? A. I don't recol-

lect now. As I said before, I can't recollect so far back what **6569**
they were doing, or about what I was reading at that time.

Q. You simply can't recall so far back? A. No, sir; can't.

Mr. Merritt:

Now it is admitted that these South Norwalk defendants received that?

Mr. Mulholland:

Yes, it is admitted as to all of them.

Q. I take it you continued a member, paying dues? A. I did yes, sir.

Q. And took no steps whatsoever to prevent the re- **6570**
election of the same officers? A. No, sir.

Q. And made no protest? A. I didn't.

Mr. Davenport:

You ought to call attention to the fact that these defendants in Norwalk didn't get any of these notices or warnings.

Mr. Merritt:

Oh yes; these warnings were not mailed to the South Norwalk men.

Recess until two o'clock.

Afternoon Session.

Tuesday, October 1, 1912. **6571**

GEORGE A. DAVIS

Sworn by the Clerk.

EXAMINED

By Mr. Mulholland:

Q. Where do you live, Mr. Davis? A. 190 South Main Street, South Norwalk, City.

Q. How long have you lived in the city of South Norwalk? A. Since approximately '66, April, '66.

Q. You are a defendant in this case? A. Yes, sir. **6572**

Q. And what is your age? A. Nearly 62 years.

Q. You are a member of the Hatters organization? A. Yes, sir.

Q. And what branch of the trade as to whether a maker or a finisher? A. A maker.

Q. I wish you would tell the jury when you first began making hats, about how long ago? A. Well, about '70 I think I began my trade.

Q. About 1870? A. About 1870, yes.

6573 Q. When did you first become affiliated with the Makers Association? A. About four years later, I think about '74, '73 or '74 I think.

Q. Do you remember when that association became a member of the United Hatters of North America in 1896? A. I don't remember when or the date, no, I don't.

Q. Since that time, since 1896, to what extent have you attended the meetings of your makers association in Norwalk? A. Very little, very little.

Q. Can you give the jury a little more definite idea? A. Well, what do you mean by definite?

6574 Q. Well, a very little, what do you mean by that? A. Well, occasionally. I have been, but not at all regularly.

Q. With regularity or how often does the makers union in Norwalk meet, how many times a year? A. Well, I couldn't tell you.

Q. Do you know whether they meet every three months? A. I think it is once a month.

Q. Once a month? A. I think so, I am not positive.

Q. Do you remember being served with the summons in this case at the time your property was attached? A. I do.

Q. Well, for several years prior to that time, with what
6575 frequency had you attended the meetings of the Norwalk Makers? A. Well, very infrequently. I never was a regular attendant at the meetings.

Q. Have you been an officer of that local? A. Never, no, sir.

Q. Were you ever a delegate to any of the conventions of the Hatters organization? A. Never.

Q. Or a delegate to any of the conventions of the American Federation of Labor? A. Never.

Q. Did you ever see a publication known as the Federationist, a Journal published by the American Federation of
6576 Labor. A. The Journal, the Hatters Journal?

Q. No, I mean a paper called the Federationist? A. Not to my knowledge, never.

Q. Where were you working along about 1902 and 1903 at the time you were sued in this case? A. At the Barthol Co., South Norwalk.

Q. Can you tell the jury about how many hatters, that is makers and finishers there are in the Norwalk District? A. No, sir.

Q. Can you approximate anywheres near? A. Approximately, I could not, I don't know as I ever heard how many they are. 6577

Q. Do you know how many men were made defendants in this case from Norwalk?

Q. Were you acquainted with Mr. Loewe? A. I never saw or heard of him until I saw him here in court.

Q. Well, you heard of him when this case was commenced? A. No, sir, I never heard his name mentioned until I was served with the writ or attachment.

Q. That is what I mean; did you know there was such a man in existence prior to the time you were attached? A. Never, never heard his name mentioned. 6578

Q. Prior to the commencement of this suit, that is prior to the time that you were served in this suit, had you any knowledge that the officers or agents of the hatters organization were following the goods of manufacturers into other states and boycotting them? A. No, sir.

Q. You understand what I mean by boycotting? A. I don't know that I do.

Q. Well, what do you mean by boycotting? A. Well, that is something I have said I don't understand.

Q. Well, you have some idea of it haven't you? A. Why, from the evidence in the court here this morning, that it was going out and trying to get people to not buy those goods. 6579

Q. Well, now, prior to the time that you were served in this case, did you know that the officers or agents of the Hatters organization were following the goods of manufacturers into other states and attempting to coerce or persuade or intimidate their customers into not buying those goods? A. I never did, no, sir.

Q. I wish you would tell the jury to what extent you have read the Journal, if any, that is, prior to the commencement of this suit? A. The Hatters' Journal? 6580

Q. Yes. A. I never read an article in one of them in my life.

Q. Have you seen the Journal? A. I have seen it, yes, sir.

Q. In the shop? A. It was brought in and put down on the corner of the bench, behind a desk that I worked on, and they were kicked off on the floor, and kicked around among the rubbish and carted away, most of them.

6581 Q. I wish you would state whether or not you ever read the minutes of the Conventions of the United Hatters? A. No, sir.

Q. And you say that prior to the time this suit was commenced you never heard Mr. Loewe's name? A. Never.

Q. Did you ever hear of the firm of Loewe & Co. prior to that time? A. No, sir.

Mr. Mulholland:

That is all.

CROSS EXAMINATION

By Mr. Merritt:

6582 Q. Which factory were you working in in 1902 and '03? A. The Barthol factory the Barthol Co.

Q. That was a union factory? A. Yes, sir.

Q. And the men working with you in the room where you worked were all members of the same organization? A. Yes, sir.

Mr. Davenport:

What was that, finisher or maker?

Witness:

Maker.

6583 Q. And you saw the Journal of the United Hatters in the room where you were working? A. It was brought in there, yes, sir, and laid on the corner of the bench as I said before.

Q. Didn't you ever talk with any of the men with whom you worked concerning that Journal, or what it contained? A. No, sir.

Q. Sure of that are you? A. Sure of it.

Q. Have you ever attended any meetings of the local union where delegates to the convention had been re-elected, or have been elected? A. Not that I ever remember.

Q. Are you sure of that? A. I am sure of it.

6584 Q. Have you ever attended the meetings of your local union where delegates to the national convention were elected? A. Not to my remembrance or knowledge, no.

Q. You testified at the last trial, "I don't remember, I might have possibly been there, but I don't recall of it." Are you willing to testify now—

The Court:

He testified to about the same thing now. He says, not to his knowledge. Then he said not to his recollection.

Q. You knew you had agents on the road? A. I knew **6585**
there were label agents on the road from hearsay.

Q. Yes, that is all I mean, going around to the different unions advertising the labels, going to the dealers? A. Not where they went, where they went I don't know, I don't know where they went, but I have heard it rumored "we have agents advertising the label."

Q. And you knew that the money you were contributing went toward the support of those agents among other things? A. Well possibly it did. Of course to know that it did—I paid dues the same as other members, but I didn't know what was done with the dues. It went, as I understood **6586**
to support the general hatters business or trade.

Q. Did you ever read the convention proceedings of the United Hatters? A. Never.

Q. Never looked into them at all? A. No, sir.

Q. You knew there were such convention proceedings printed, didn't you? A. Not by positive knowledge, no.

Q. No, I don't mean by positive knowledge. You had heard or read that there were such proceedings printed? A. I hadn't heard so, I hadn't heard so, didn't read any, but I had heard—it is the common talk among people as you pass by other places, you will hear such remarks by hearsay, only posi- **6587**
tive knowledge I have not.

Q. All I am inquiring on about in this case, is hearsay. Haven't you ever heard by hearsay that your organization or its officers were engaged in preventing the sale of non-union goods? A. Never before this trial, or before the other trial. I heard it here first.

Q. You never heard any one talk about that? A. I never read anything about it, no, sir.

Q. Did you read the complaint that was served on you? A. Yes.

Q. Well, you knew then of course that it was being **6588**
claimed that your organization was engaged in boycotting? A. Yes, that it was being claimed?

Q. Yes. A. I have heard that yes.

Q. Did you know it before the last trial? A. I know that it was claimed in the writ.

Q. Did you ever know before that it was claimed that your organization had been accused of it? A. No, sir.

Q. Did you ever hear that suit had been brought against your organization by Henry H. Roeloff? A. No, sir.

6589 Q. Didn't you know your officers of your union and your union had been sued for $250,000? A. No, sir.

Q. What paper do you read? A. I read very little in any paper.

Q. What paper were you reading in 1902, and 1903? A. Well, if any, the Norwalk Hour, I believe, or Sentinel, I forget which it was I took. I know my wife took one, and then after a time took the other and abandoned the first one, but as regards to which, really I couldn't tell you.

Q. Now let us see what your other testimony was at the former trial? See if this is right: "(Q.) Do you read
6590 any daily paper in Norwalk? A. Yes. (Q.) What paper? (A.) Well, mostly the Sentinel. (Q.) Were you reading that paper in 1902 and 1903? (A.) No. (Q.) What paper were you reading then? (A.) I read the Norwalk Hour daily." A. The Daily Hour, that was the paper that was in the house. If it was understood that I daily read the Hour, I didn't mean that to be my evidence.

Q. No, I understand, I guess there is no doubt you read the daily paper. A. I read the daily paper if I read at all, if I read at all, that is my testimony, that was the paper.

6591 Q. Well, you testified, "What paper were you reading then? (A.) I read the Norwalk Hour." A. Yes, that is the one.

Q. You were reading the Norwalk Hour in 1902 and '03? A. That was all I had to read any paper.

Q. You were reading that? A. If I read any paper. Well, I don't deny that I didn't read it all, but to read it—

Q. I am trying to get your idea; what do you mean by read? A. Do you mean reading the whole paper?

Q. No, I think you may omit the advertisements; did you read that paper in 1902 and '03? A. Well, I say no, not as a general reading, but the paper was in the house, and I
6592 would pick it up for any daily town news possibly occasionally. Now if you will let me explain—

Q. Go ahead. A. Immediately after my supper, then is the only time I have to read, and I am of a very nervous temperament and I fall asleep, to explain, in reference to this court the other evening, my wife called attention to it because—

Q. I don't think you better take time to explain that. A. That is all.

Q. You didn't offer any such explanation or qualification the last testimony you gave? A. No, I did not. **6593**

Q. Didn't you ever read anything in the Norwalk Hour concerning your organization, about what it was doing? A. Not that I remember.

Q. Are you willing to testify you never read anything relating to boycotting or anything relating to any efforts to prevent the sale of non union goods? A. Yes, I am willing to say that.

Q. You are willing? A. Yes.

Q. As I understand your testimony, you are not testifying that you do not remember, but you are testifying positively that you did not ever read anything of this kind? A. To my knowledge I never did, no. **6594**

Q. I am afraid you don't understand; is it a matter of recollection on your part or a matter of positive knowledge that you never did read anything of this kind? A. Well, I don't remember ever reading anything of the kind, and therefore, I say no.

Q. That is what I want exactly. It is 10 years ago and I shouldn't think you would remember.

Mr. Merritt:

Do I understand as to all of these Norwalk witnesses, there is the same stipulation that they were paid to come here and testify at the last trial, their expenses and also the days wages? **6595**

Mr. Mulholland:

I think so. There may be some exceptions, but you can apply it to all of them.

Mr. Merritt:

We can take that without examining each one in regard to that?

Mr. Mulholland:

Yes.

Mr. Merritt: **6596**

With regard also as to the authorization to employ counsel?

Mr. Mulholland:

There may be a few exceptions, but we will let it go as to all of them to save time. Of course it is understood that the line of testimony before the jury is subject to our exception.

Mr. Merritt:

Oh yes.

6597 Q. After you were sued you continued a member paying dues? A. I did.

Q. You made no protests? A. No, sir.

Q. Made no effort to prevent the re-election of the same officers? A. None, I have not been to a meeting since.

Q. Did you ever vote for delegates to the American Federation of Labor? A. Never.

Q. You are sure of that, are you? A. Yes, sir.

Q. Did you ever read your constitution? A. What constitution?

Q. The constitution of the United Hatters? A. I
6598 don't know that I ever did.

Q. You knew that your organization was connected or was engaged in an effort to unionize as many factories as possible, didn't you? A. I have heard that.

Q. You had heard that before the suit was started? A. I heard it here.

Q. No, but I mean prior to this suit, did you hear that? A. No, no, sir.

Q. Didn't you know that your constitution had a provision imposing a special duty on the officers to use all means in their power to unionize factories? A. No, I never read
6599 it, never have had one that I know of.

FANTON W. BEERS.

Sworn by the Clerk.

EXAMINED

By Mr. Mulholland:

Q. Where do you live, Mr. Beers? A. Norwalk.

Q. Whereabouts in Norwalk? A. Westport Ave.

Q. How long have you resided in the city of Norwalk? All my life, 53 years about.

Q. That is your age now? A. Yes, sir.

6600 Q. You are a defendant in this case, I believe? A. Yes, sir.

Q. How long have you been working at the hatters trade? A. Well about thirty years, I believe, I wouldn't say positively.

Q. And what branch of the trade? A. Maker.

Q. Can you tell the jury about when you first became affiliated with the makers organization? A. Well, it is not quite—about 27 years I believe, I don't know just exactly. I couldn't say exactly when, I couldn't say.

Q. Do you know Mr. Loewe, of Danbury, Conn.? A. No, sir. 6601

Q. Did you know him prior to the commencement of this suit? A. No, sir, I did not.

Q. Had you ever heard of him prior to the time he attached your property? A. No, sir, I did not.

Q. Had you ever heard of D. E. Loewe & Co. prior to the time you were attached? A. No, sir, I did not.

Q. Prior to the time that you were served in this case, had you ever heard or read that the officers or agents of your organization were following the goods of manufacturers of hats into other states, and attempting to intimidate, persuade or coerce merchants into not buying those goods? A. No, sir, I did not. 6602

Q. Prior to the commencement of this suit, did you hear of any trouble existing in the factory of Berg & Co.? A. No, sir.

Q. Did you know at that time where the factory of Berg & Co. was located? A. No, sir, I did not.

Q. Prior to the commencement of this suit, did you hear of the firm of Roeloff & Co.? A. No, sir.

Q. Did you at that time know where that company's factory was located? A. No, sir. 6603

Q. Mr. Beers, before you were served with the summons in this case had you heard or read that the officers or agents of the United Hatters of North America were conducting an interstate boycott against the business of D. E. Loewe & Co. of Danbury, Conn.? A. No, sir, I did not.

Q. Of D. E. Loewe & Co.? A. No, sir, I did not.

Q. I understand you to say you never heard of them, prior to the time you were served? A. Never heard of them.

Q. Had you ever worked prior to the commencement of this suit, in districts other than the Norwalk Districts? A. No, sir. 6604

Q. Been there all your life? A. Been there all my life.

Q. Have you ever been an officer of your local union? A. No, sir.

Q. Or a delegate to any of the convention of the Hatters organization? A. No, sir.

Q. Or a delegate to the convention of the American Federation of Labor? A. No, sir.

6605 Q. Were you, prior to the commencement of this suit, familiar with a publication known as the Federationist? A. No, sir.

Q. Do you know now who publishes it? A. No, sir, I don't.

Q. Did you ever read a copy of it? A. No, sir.

Q. So far as you know, have you ever seen a copy of it? A. No, sir, I never did.

Q. In the shops where you were employed, did you ever see copies of the Journal of the United Hatters of North America? A. Yes, sir.

6606 Q. I wish you would state to the jury whether or not you ever read one? A. I never read one in my life.

Q. Now, Mr. Beers, prior to the time this suit was commenced against you, were you knowingly a party to a conspiracy, or a combination of men to interfere with, or to destroy Mr. Loewe's interstate commerce? A. No, sir, I did not.

Q. Or were you a party to any such combination to destroy or interfere with the interstate commerce of any other manufacturer? A. No, sir.

Mr. Mulholland:

6607 You may take the witness.

CROSS EXAMINATION

By Mr. Merritt:

Q. And during the time 1900 to 1903, you were working in a union factory in Danbury? A. Yes, sir, in Norwalk.

Q. And from time to time you saw the Journal of the United Hatters? A. I saw it lying on the bench, but I never read it.

Q. Never looked into it? A. I saw it said "Journal" on the outside but I never looked into it.

6608 Q. You knew it was the Journal of your organization, did you not? A. I knew it was a hatters journal, I don't know what it contained.

Q. You knew it was the Journal of your Organization? A. I couldn't say. I know it was a journal, but I couldn't say whether it was the Hatters union or not. It was "Hatters" I think on the outside, that is all I know about it.

Q. Didn't you infer that it was the journal of the hatters union? A. I didn't infer, no, sir.

Q. It never occurred to you? A. No, sir.

Q. That the paper which was left in the factories where you were working, was the Journal of your union? A. The Hatters journal, that is all I know. 6609

Q. Yes, but I am asking if it was a journal of your union. Let me show you. (Mr. Merritt shows the witness a volume of the Journal.) A. I supposed it to be the journal of the union, if it was the Hatters journal.

Q. Let us see what the cover says, "Journal of the United Hatters of North America," then follows your union label, isn't it? A. "United Hatters Journal" is all I ever saw, Journal of the United Hatters.

Q. Then follows the union label? A. I didn't read any more. 6610

Q. You didn't read any of this down here? A. No, sir, I did not.

Q. You stopped with these three lines on the covers? A. I certainly did.

Q. You remember that distinctly then? A. Yes, sir.

Q. Very distinctly you read this? A. I never read anything else.

Q. That is all? A. Yes, sir.

Q. You saw there "Journal of the United Hatters of North America?" A. Yes, sir.

Q. Didn't you infer from that that it was the journal published by the United Hatters of North America? A. I didn't know who it was published by, I knew it was the Journal of the United Hatters from what it said on the outside. 6611

Q. You believed that. Did you ever see the convention proceedings of the United Hatters? A. No, sir.

Q. Never even saw the cover? A. No, sir.

Q. If they were in the factory where you worked? A. I never saw them, no, sir, I never did.

Q. Were you a reader of any local paper at the time? A. Why, I used to read the Hour, when I got it, but I didn't get it very often. 6612

Q. When you could get it? A. Yes, sir, when the boy came around with them, why I would sometimes have it.

Q. You read it sometimes? A. I read it sometimes, yes, sir.

Q. Did you ever read in the Hour— A. No, sir.

Q. —concerning your organization? A. No, sir, I never did.

6613 Q. You remember what you did read ten years ago? A. I haven't got such a memory as that. I don't think I do, no, sir, ten years ago.

Q. That is what strikes me as strange, how can you testify you never read anything about your organization ten years ago in the Hour? A. I can't say I did read anything about it.

Q. No, but you testify you do not. If you can't remember ten years ago, how can you testify that you did not read any of the articles about our union in the Norwalk Hour ten years ago? A. Well, I can say that I did not.

6614 Q. Did you know the organization had a union label? A. Yes, sir.

Q. Did you know that they advertised the union label? A. No, sir, I didn't know they advertised it only as they put it in the hats, that is all I knew they advertised it.

Q. You never heard they had agents on the road? A. I did not.

Q. Ever read your constitution? A. No, sir, never read it.

Q. Didn't know you had a constitution? A. Did I know it?

6615 Q. Yes. A. Why I don't know as I do. I supposed they had a constitution for all.

Q. What is that? A. I suppose there is a constitution of all orders.

Q. You have been an educated man all this time? A. Not so very highly, no, sir.

Q. I mean you could read and write and everything of that kind? A. Why, yes.

Q. And nothing the matter with your faculties? A. No, sir, I guess not, I hope not.

Q. Did you ever know that organized labor was ever engaged in boycotting? A. No, sir, I never did.

6616 Q. Did you ever know that people had accused organized labor of being engaged in boycotts? A. No, sir. Never read that, never heard of it.

Q. Ever read any other paper beside the local paper in Norwalk? A. No, sir.

Q. Never read any New York papers? A. No, sir, I didn't take any New York papers.

Q. Or any other papers of any other city? A. No, sir.

Mr. Davenport:

Did you say you took the Sunday School paper? A. Yes, sir. 6617

Q. You continued a member of the organization after the suit was started? A. Yes, sir, I didn't know what else to do but continue so.

Q. Did it ever occur to you to try and look into this thing and put a stop to it? A. I didn't believe there was ever anything going wrong, I couldn't believe it.

Q. Why couldn't you find out when you knew the Journals were there before you to read them, but you never took the trouble to open the cover? A. I didn't know as 6618 there was anything wrong in the journal of our local.

Q. How could you have the feeling that that could not be true with all the ordinary channels of information, when all the ordinary channels of information you had absolutely thrust from you? A. I didn't thrust any from me, not willingly, I didn't have any idea there was anything in it on that line.

THOMAS LAYHE.

Sworn by the Clerk.

EXAMINED 6619

By Mr. Mulholland:

Q. Where do you live, Mr. Layhe? A. South Norwalk.

Q. Whereabouts in South Norwalk? A. Ivy Place.

Q. No. 8 Ivy Place? A. No. 8 Ivy Place.

Q. And how long have you lived in Norwalk? A. About 30 years.

Q. You are a defendant in this case? A. Yes, sir.

Q. How old are you? A. 53.

Q. Man of family? A Married man, no family.

Q. When did you first begin, about when did you begin 6620 working at the hatters trade? A. Well, about '76.

Q. What branch of the trade? A. Makers.

Q. Then you belonged all these years to one Makers organization? A. Not all the time, I have worked in Danbury.

Q. How long then have you been continuously a member of the Makers organization in Norwalk? A. Somewhere about 28 years.

Q. Do you remember the time when the papers were served on you in this case? A. Yes, sir.

6621 Q. At that time did you know Mr. D. E. Loewe of Danbury? A. No, sir.

Q. Had you ever heard of him? A. No, sir.

Q. Prior to that time had you ever heard or read that the officers or agents of your organization were following the goods of manufacturers into other states than Connecticut, and trying to persuade, intimidate or coerce merchants not to buy those goods? A. No, sir.

Q. Prior to the time that these papers were served on you as a defendant in this case, had you ever knowingly combined with any other men to boycott Mr. Loewe? A.

6622 No, sir.

Q. Or to interfere with his interstate trade or commerce? A. No, sir.

Q. Have you ever been an officer of any local in this union? A. No, sir.

Q. Have you ever been a delegate to any of its conventions? A. No, sir.

Q. Have you ever been a delegate to any convention of the American Federation of Labor? A. No, sir.

Q. Did you ever see a journal or a publication known as the Federationist? A. You mean the journal of the

6623 United Hatters?

Q. No, I mean another publication known as the Federationist? A. No, sir.

Q. Do you know who publishes it? A. No, sir.

Q. Now, coming to the Journal, prior to the time this suit was commenced, had you seen a copy of the journal in the shop where you worked? A. Yes, sir.

Q. To what extent did you read the journal? A. I brought it home about three times.

Q. How long was that, if it was prior to the time that you were sued? A. Oh, it was some time, I couldn't say, it was some time before. I know I gave it up, I gave it

6624 up after I brought it home, I don't know as I read it.

Q. What do you mean, you took it home on two occasions? A. It was lying on the bench and I put it in my pocket.

Q. How many times did you take it home? A. Three times.

Q. Did you read them? A. I looked over one of them and I didn't see anything that interested me, all I could see was some apprentices, and I could see where they registered, where different apprentices entered the trade.

Q. Where they registered apprentices, and some of them had gone away? A. Yes, I didn't see anything that interested me. 6625

Mr. Mulholland:

You may take the witness.

CROSS EXAMINATION

By Mr. Merritt:

Q. You testify that you brought this journal home to your house three times? A. Yes.

Q. Your memory is perfectly clear on that point? A. Yes. 6626

Q. It is, and you are sure you did not bring it home— A. Of course, I won't say, of course it might be four times, it might be twice, but it is as near as I could get to it.

Q. You remember looking into it occasionally? A. I think I do, one night.

Q. You remember what you read in it? A. No, sir, yes, all I could remember is that there was something about who was at the trade, or something like that, registered or something.

Q. Now do I understand you are willing to swear you never read anything else in it? A. I don't think I did. 6627

Q. You don't think you did, that is, according to your best recollection, you don't remember reading anything else? A. No, sir.

Q. Is that true? A. Yes, sir.

Q. Were you a reader of the local papers? A. I take the Sentinel.

Q. The Norwalk Hour? A. No, sir.

Q. Just the Sentinel? A. Just the Sentinel.

Q. Were you taking the Sentinel in 1902 and '03? A. I can't remember back as far as that.

Q. What? A. I can't remember back as far as that.

Q. Can't remember 10 years ago whether you took the paper or not? A. Well, yes, I think I did, but I didn't really take it steady. 6628

Q. Well, can you remember what you read in it 10 years ago? A. No, sir.

Q. You wouldn't have any idea about it, would you? A. No, I don't think I would.

Q. What? A. I don't think I would.

6629 Q. Speak up so we can hear you. If I read you an article from it you can't tell whether you heard it or not, can you? A. I don't think I could.

Q. Then if there were articles in it, showing that your organization had been engaged in trying to unionize factories by preventing the sale of their goods, you wouldn't know whether you had read it or not, would you? A. No, I would not.

Q. I mean ten years ago? A. No, I would not.

Q. Do you remember a special assessment being levied to send these agents on the road? A. Do I remember it?

6630 Q. Yes. A. A special assessment being levied to send the agents on the road? A. Yes.

Q. Well, wasn't it explained to you at that time that these agents were being sent out on account of the trouble with F. Berg & Co.? A. No, sir.

Q. Did you attend the meetings? A. Not very regular.

Q. Well you did occasionally? A. Yes, sir.

Q. Didn't you hear the delegates from your conventions report as to what had been done at the conventions? A. Yes, but I couldn't remember only once that I was to a meeting, but I didn't know, I couldn't say what the report was.

6631 Q. But you do remember that he reported, some one reported at that meeting, but what it was you don't know? A. I do remember that he reported, some one reported at that meeting, but what it was I don't know now.

Q. Well, you knew that your organization held the conventions, didn't you? A. Yes.

Q. And you voted for delegates to those conventions? A. I think we did, I ain't sure of it.

Q. You said in regard to that, you thought you did but you were not sure? A. Yes.

6632 Q. And you think you were present at some meeting where the delegates brought the convention report? A. Yes, sir.

Q. But you don't remember what that report was? A. No, sir.

Q. Did you ever read the convention proceedings? A. No, sir.

Q. You knew there were printed convention proceedings, didn't you? A. No, I don't know as I did.

Q. Didn't you ever read books like that, Plaintiffs Exhibits 3 and 4? A. I don't remember that, seeing them.

Q. Don't remember seeing either of them? A. No, sir. 6633

Q. Well, I take it, as far as your testimony goes, you cannot remember what happened 10 years ago at meetings which you attended, and you can't remember what you might have read, that is true, isn't it? A. Have I got to answer?

Q. Yes. A. Well, I can remember some.

Q. But you can't remember everything? A. No.

Q. Did you continue a member after this suit was started? A. Yes, sir.

Q. And continuing paying dues, and made no protest? A. No, sir. 6634

Q. Made no efforts to prevent the reelection of the same officers? A. No, sir.

Q. Do you know John Sculley? A. Yes, sir.

Q. Do you know him well? A. No, sir.

Q. John Sculley, was he secretary of your union? A. No, sir.

Q. Well, you are a maker, are you not? A. Yes, sir.

Q. Was he secretary of the Finishers? A. He was secretary of the Finishers.

Q. Who was secretary of your union? A. Well, we had Brennan and we had quite a number of them, Smith. 6635

Q. Golden? A. Golden.

Q. Did you know these men personally? A. Yes.

Q. Didn't you ever talk to them about what your agents were doing on the road? A. No, sir.

ROBERT PEARSON.

Sworn by the Clerk.

EXAMINED

By Mr. Mulholland:

Q. Robert Pearson? A. Yes, sir.

Q. That is your name? A. Yes. 6636

Q. Where do you live, Mr. Pearson? A. 47 Taylor Ave., South Norwalk.

Q. How long have you lived in South Norwalk? A. Since 1881.

Q. You are a defendant in this case? A. I am.

Q. What is your age? A. 73 the 22nd of next November.

Q. How long have you been working at the hatters business? A. Ever since I was 14 years old.

6637 Q. And what branch of the trade? A. All branches in the foreign country, but only at hat curling in this country.

Q. How long have you been in this country, Mr. Pearson? A. Since 1879.

Q. Do you remember the time that you were sued in this case and service was had upon you? A. I do.

Q. In the Loewe case? A. I do.

Q. Prior to that time, did you know Mr. Loewe? A. Never saw the gentleman before I saw him here at the trial.

6638 Q. That is the trial two or three years ago? A. Two years and a half if I remember right.

Q. Well, prior to the time that your property was attached— A. Attached my bank account.

Q. Prior to that time had you ever heard of Mr. Loewe, that is, did you know what business he was in and where he lived? A. I did.

Q. But had never met him personally? A. No, sir.

Q. Prior to the time that this suit was commenced, had you held office in your local union? A. I had.

Q. What office? A. President.

6639 Q. How long prior to that time were you president? A. I was trying to remember it, may be two or three years before.

Q. Do you remember hearing of anything of the trouble in the factory known as the Berg factory? A. I do.

Q. And had you prior to that time heard of the trouble in the Roeloff factory? A. I do, Mr. Roeloff's factory at the time I remember it, was a union shop, there was a kind of a jubilee and I remember they made presents of gold watches to the officers of our association, a perfect love feast.

6640 Q. You heard there about the Roeloffs trouble? A. It was a perfect love feast at that time between Roeloffs and our organization.

Q. I guess that is so. A. That surprised me.

Q. Now had you ever heard shortly before that Mr. Roeloff had sued the officers of your organization for $250,000? A. I cannot remember that part, but it is possible it is quite true.

Q. I mean, had you heard of it? A. If I had, I have forgot it.

Q. Now Mr. Pearson prior to the commencement of this suit that is prior to the time your bank account was attached, did you have any knowledge of any boycotting operations carried on in states other than Connecticut, by the officers or agents of your organization? A. I did not. 6641

Q. Prior to the commencement of this suit against you, were you a party to any conspiracy or combination to destroy Mr. Loewe's interstate commerce or trade? A. I was not.

(Question repeated by the stenographer.)

A. I said I did not. I gave a negative reply.

Mr. Mulholland:

I think you may take the witness. 6642

CROSS EXAMINATION

By Mr. Merritt:

Q. You said you had no knowledge of the fact that your officers or agents were conducting any boycotts or anything of the kind? A. I did.

Q. You mean also that you had no information of that fact? A. I do.

Q. You mean you never heard or read anything? A. I did of the boycotting.

Q. To the effect that your officers and agents were conducting a boycott? A. I did not. 6643

Q. Now let us first agree on what a boycott is. What do you mean, when you say a boycott? A. To injure a man's business, to hurt him.

Q. And you never heard or read that your organization at any time was engaged in any boycotts to injure the manufacturers business? A. No I didn't know, not to injure it, no.

Q. You never knew that your officers or agents had engaged in any attempt to prevent the sale of non union goods? A. Well, our union label indirectly for that very purpose, it is indirectly against non union goods, as our union label. We ask the public through the label to purchase union goods, and indirectly it hurts non union goods. That is the object of the label. I may state it, because I am the father of the union label, and my object in getting it was the very fact, to advocate union made goods to the public and get customers. 6644

Q. Now did you ever read, or hear it, or read it, that your organization had been engaged in any attempt to prevent the sale of the goods of any particular non union manufacturer? A. I did not

6645 Q. You never heard that? A. I did not, not that way.

Q. Well, explain yourself, if you want to qualify it. A. Well, as I say, they are to go and ask people to buy union made goods.

Q. And you never heard or read that they had asked anyone not to buy the goods of any particular manufacturer? A. No, I never knew that, only in a general way, that union made goods, were a good thing, and ask them to purchase union made goods, or union made hats.

Q. Did you ever know or hear that the agents of the United Hatters had been going around and requesting partic-

6646 ular dealers not to deal with particular manufacturers? A. Not until this trial commenced; I have heard of it since.

Q. You have heard and you did know that your organization had agents? A. Certainly.

Q. Going around the country and trying to bring about the sale of union goods instead of non union goods? A. Yes, sir.

Q. And where did you get your information from? A. Well, I think I got it from the general news of the trade, I guess through the hatters journal.

Q. You think in the news of the trade or the hatters

6647 journal? A. I think so; now these late days. Perhaps I got it from conversation, perhaps I may have got it from the reports of officers or delegates.

Q. Think you have; any information you had concerning the operations of your agents on the road, you obtained from your official journal and the reports of the conventions? A. I think so, I couldn't say knowingly positively, but I guess so generally knowing so, yes, sir.

Q. According to your recollection you think that is where you got your information from? A. That is my general opinion; I don't know now it is so long ago I first heard

6648 of it.

Q. You mean your general impression is you were reading from year to year and that from the reports of these agents or from the reports of the convention as they appeared in the journal, or as they appeared in the Convention proceedings? A. Yes.

Q. And yet you are willing to testify that you never heard or read that any of these officers or agents were engaged in any attempt to prevent the sale of any goods of any particular manufacturer? A. As I told you before, the ad-

vocacy of the union label was to encourage our goods in pref- 6649
erence to theirs, and indirectly to prevent the selling of non union goods indirectly. That is business, I consider it business, perhaps that was the idea that was in the convention—

(The stenographer repeated the question.) A. I guess that is correct.

Q. You are a regular reader of the Journal, weren't you? A. Well, as a rule, I may say yes, as a rule. But as I tell you, as I told you at my former trial, you will have it there—

Q. That is just what I am going to do, Mr. Pearson; "(Q.) Are you a reader of the Journal? (A.) I am; al- 6650
ways was; I believed in it." A. Well, I don't remember saying that part of it. I guess the stenographer put that in, I don't remember saying it, but let it go at that, let it go at that.

Q. You always were a reader of it? A. Yes, sir; as a general rule, but I really didn't take notice of everything that was in it, I tell you that fact.

Q. Don't you know that in this entire list of journals, containing reports of agents down to the time of the trial, there is practically not a single report but what that agent is trying to prevent the sale of goods of some particular manufacturer? A. No, sir. 6651

Q. Down to the time of this suit? A. No, sir.

Q. You don't know that? A. No, sir.

Q. And your information you said concerning agents come from these reports of these agents and from the reports of your officers? A. Well, indirectly I said so, I said so, because I didn't know different. I couldn't tell you now, where I first heard it, how the agents were employed. It is 12 or 15 years ago you are asking me.

Q. In the February Journal in 1903 is the President's report? A. Yes, sir.

Q. President John Moffitt? A. Yes. 6652

Q. And after referring to the unionizing of several factories he says, in February, 1903,

"The strike inaugurated at the factory of D. E. Loewe & Co., of Danbury, in October last is still in vogue and we look to a very early settlement as our five agents on the road are working hard to that end."

Did you ever read that? A. Oh, I couldn't tell you now, whether I read it or not, very likely I did.

6653 Q. There is the statement that the five agents are out on the road trying to prevent the sale of Loewe's goods. A. Just read that again.

Q. "Strike inaugurated at the factory"— A. I mean the latter part of it.

Q. Well, it is very short. "Our five agents on the road are working hard to that end." A. To prevent the sale of the goods?

Q. Yes? A. Is that what it says?

Q. No. I will read everything; it says, I have read just what he said, nothing more and nothing less. I will read it

6654 again. A. As to what end?

Q. To the end of forcing D. E. Loewe & Co. to unionize their factory by ruining his business, that is your idea? A. Is that your idea?

Q. Well, isn't it yours? A. No.

Q. Let us read again and let us see what yours is; "The strike inaugurated at the factory of D. E. Loewe & Co. of Danbury in October last is still in vogue, and we look to a very early settlement as our five agents on the road are working hard to this end." A. That is to make a settlement?

Q. What is your understanding? A. To make a set-

6655 tlement.

Q. To bring D. E. Loewe & Co. to terms, isn't it? A. Yes, but that doesn't say ruin his business by any means. We think it is to a man's advantage to have a union shop.

Q. Yes, but you are going to compel him to have it whether he thinks it is to his advantage or not, is that the idea? A. No.

Q. Then why are your five agents on the road trying to force a settlement with D. E. Loewe & Co.? A. It is to advocate the sale of union made goods, and to get them to unionize their shops.

6656 Q. Yes, but why are these five agents on the road trying to bring about a settlement with D. E. Loewe & Co. and not the other non union manufacturers? A. I guess it was the general way they did it.

Q. That is the best explanation you have to offer us, is it? A. Why, in a general way, yes; I guess it is good enough.

Q. Now, let me read you a report from the Journal for 1903, and see whether this falls in with your idea of a general booming of the union label, this is under the head of "News from our agents." This is by F. J. O'Hara, and the report

is in under date of—well, it is printed in the journal of 1903; by the way, when did you become a director? A. In 1903. 6657

Q. What time? A. May.

Q. You were not a director when this report was given? A. No, sir.

Q. Well, I will read you one while you were a director, in a few minutes. You did not attend any convention? A. No, I never was to any convention, no, sir.

Q. "News from our Agents. Richmond, Va., Mr. John A. Moffitt, Editor of the Journal.

Dear Sir: I hope you will excuse my apparent neglect in not writing you a letter for the Journal before this, about the work I am doing in Richmond. The work I have been doing was of such a nature that I could not go into details until the present time without retarding it. When I arrived here the first thing I done was to call on Mr. T. D. Stokes and laid our case before him. My interview with him gave me very little encouragement, and according to your instructions, and having his particular brand in my possession which you gave me before leaving Orange, I proceeded to call on the retailers. On investigation I found there was 32 stores handling hats, and 29 handling the goods I was looking for and all buying from Stokes." (And it is in record here that he is looking for Loewe's hats). 6658 6659

"After telling the retailers the object of my mission, they told me they were ignorant of the fact that this hat was non union made and would give us all the possible support they could in our fight for rights and justice and would have a talk with Mr. Stokes about handling this hat and tell him that they would not be able to handle this scab made hat until the factory was unionized and it had the label. After visiting all the stores in Richmond, I went to Petersburg, Manchester and Fulton and called on the retailers in those places, and found the hat in every store. These retailers said they knew nothing about the hatters union label, but would do the best they could to handle hats with the union label hereafter. In the meantime, I visited all the unions in Richmond, Petersburg, Manchester and Fulton. Richmond has 32 white union and 8 colored and they all pledged us their support. When I visited the Central Labor Union"—you know what the Central Labor Unions are, don't you? A. Yes. 6660

"When I visited the Central Labor Union and told them our grievance against this concern, at my request they ap-

6661 pointed a committee to wait on T. D. Stokes and they got no better satisfaction from him than I did. Also had a committee from the cigarmakers call on him and no better results came from these interviews. Mr. Lee and myself, together with these two committees called on him again and got the same old story. Exhausting every possible means to get a favorable answer from Mr. Stokes, we then decided to draw up resolutions which you have a copy of, placing T. D. Stokes on the unfair list and have the Central Labor Unions adopt them, which they did without a murmer. After doing this we had type written copies of the resolutions made, delivered one to
6662 each of the unions and all the retailers, whether they bought hats from him or not."

Now, you have heard that read, are you prepared to state that that does not show that your organization was engaged in trying to prevent the sale of goods of this particular manufacturer? A. Why, Loewe?

Q. Trying to prevent the sale of goods sold by this T. D. Stokes by putting him on the unfair list because he handled these goods? A. I would not defend that if that was the intention.

Q. You would not defend that? A. No, not if that
6663 was the intention.

Q. I guess the only difference between you and me, Mr. Pearson, is this, I don't want to go through and read this, but you claim that your knowledge concerning these agents and your officers' operations is gained or gathered primarily from the records? A. Sure.

Q. That is the reports of these agents and the reports of your officers? A. Yes.

Q. And yet you persist in stating that you never had any knowledge that they were trying to prevent the sale of goods of any particular manufacturer? A. Yes.

6664 Q. Is that so? A. That is so, I thought in a general way.

Q. Well, I will have to read you a little more, I guess. I will read you another one about Loewe. This is the report of W. C. Hannelly from the Journal for Sept. 1903. Mr. Hennelly reports from the Pacific Coast:

"I have been in this city for the past four days. The city is well organized. (The city referred to is Portland, Oregon.) The city is well organized, and good results can be expected from Portland in the future. The State Federa-

tion of Labor of Oregon and the Portland Federated Trades Council have endorsed the action of the California State Federation of Labor and the San Francisco Council of Labor, declaring a certain San Francisco hat jobbing house unfair. Since my last letter for The Journal I have operated in the following places: Los Angeles, Pasedena, San Bernardino, Redlands, Riverside, San Pedro, Santa Diego, Santa Ana, Santa Barbara, Bakersfield and Fresno, Cal. At all of the above places the central bodies and local unions endorsed the action of the San Francisco Council of Labor and the California State Federation of Labor, without a single exception. 6665

"I visited those meetings and addressed them on behalf of our label and told them of our present trouble and how they could help us in their locality. I also visited all of the hat dealers in each place and billed each town with large and small cards. Brother D. P. Kelly is operating in the vicinity of San Francisco, Sacramento, Stockton, Oakland, San Jose, Santa Cruz, San Raphael, Eureka and other places convenient to that locality. He, no doubt is kept quite busy as there is a lot of work to be accomplished there in our line." 6666

There is a report made when you were a director, about putting this dealer on the unfair list. A. I guess I was not there, I guess that was not when I was a director.

Q. This was made in August, 1903; weren't you a director then? A. I was, but that does not come before me at all. 6667

Q. It was a report made by the agents of the United Hatters of North America while you were a director, was it not? A. Yes, but you understand it never came before the board, you understand that part, that the board had nothing whatever to do with the agents. I never saw an agent, never had anything to do with them.

Q. You were a member of the board of directors? A. Yes, sir.

Q. You mean the board of directors? A. Yes. 6668

Q. The general executive board did? A. That is entirely different.

Q. Then as I understand, are you prepared to defend it? A. To defend it?

Q. Yes? A. No, not if they were doing wrong. I shall defend nothing that is wrong, not at all. I am not here for that purpose.

1667

6669 Q. Well, how is it that you have read all these records? A. Well, I don't know that I have read them. I said, simply said, that I heard of the agents generally. Perhaps I never read those in detail.

Q. I don't mean to confine myself to any particular report, but, according to the best of my recollection, there is hardly a portion of a report of an agent during all this period of years, printed in these journals but what shows that that agent was on the road primarily to injure a different manufacturer? A. Well, they were there, as I told you before, for a general purpose to defend and advance our side of it.

6670 Q. You stated that you read the convention proceedings? A. No.

Q. Of any of the conventions? A. Why, yes.

Q. Did you ever read the convention proceedings of 1907?

Mr. Mulholland:

I object to that as not proper cross examination. It was admitted for a specific purpose, as I understand it.

Q. Have you read the convention proceedings in 1903? A. Which convention?

6671 Q. The United Hatters Convention? A. Well, I wouldn't say that I did. I just glanced at it.

Q. And the convention proceedings of 1900? A. I don't remember reading in that convention then. Was it four years before?

Q. In 1900, that was the year. Did you ever see this? A. Why, sure, I have seen them. I can't remember the date. It is 1900 that is all.

Q. And you have read this? A. I have read part of it.

Q. I show you exhibit 4? A. I have seen that. I didn't hear it, I saw it there. I have heard you talk so much about it, I know what it is.

6672 Q. Did you ever hear it before? A. No, I never heard it except I was here.

Q. You said you had read the reports of the officers? A. I read it, sure.

Q. You read it there? A. Sure.

Q. You read the resolution which he states was passed by the American Federation of Labor as follows: A. It makes no difference, it was a good spread eagle speech, I remember it well, that is what it was, and you made the best of it.

Q. I know it, but how can you reconcile your testimony that you never knew your organization or its officers or agents were trying to injure anyone's business, if you had read this speech? A. Well, I don't agree that is a speech. It was a spread eagle speech, a great deal more than what was in it. 6673

Q. How do you know that? A. Well, it is my impression; I don't know it.

Q. And all your information came from these reports and the reports of agents? A. Well, he made too much of what he did, that is all.

Q. You stated that all your information came from these reports? A. No, I didn't read it all. 6674

Q. Most of it? A. It came from all the officers, and the reports of the meetings, in the trade union meetings.

Q. Well, I will call your attention to a trade union meeting pretty soon. You don't think there is any explanation of this statement of Mr. Moffitt's do you?

"By the direction of your general executive committee your President attended the convention at Scranton, and with the assistance of the delegates at that body passed this resolution."

And then follows a lot of Whereases, the end of it being as follows: 6675

"Resolved that we hereby call upon the International, National and Local Unions affiliated with the American Federation of Labor to give all the assistance possible to the United Hatters of North America, in their unequal fight which they are at present so manfully making against wrong and oppression, and we hereby pledge ourselves not to patronize any dealer or dealers who handles the products of non union hatters, and more particularly the product of Berg or Henry H. Roeloff & Co."

You have heard that before, haven't you? A. Well, you brought it to my attention now. I suppose I must have read it. 6676

Q. Now, did you know that three years before that the Hatters organization had a resolution passed by the American Federation of Labor in almost exactly the same language, but substituting the name of Fred Berg & Co.? A. No, I did not.

Q. Didn't know it? A. No.

Q. Didn't you read it? A. I might have heard it.

6677 Q. You might have read it and forgot it? A. No, I won't admit that even. There is lots of things sometimes in the newspapers you don't read very likely.

Q. You won't even admit that you ever read it and forgot it? A. I might say yes or no to that question. I know there was a row at Berg's, a quarrel; I know there was a fight; I did know that, but I didn't know that union labor had anything to do with it; that is the first time I ever heard that to my present knowledge.

Q. Did you ever read the convention proceedings of 1907? A. When?

6678 Q. You were a director up to the time that convention elected two directors? A. I was not a director at that meeting.

Q. When did your term expire? A. 1907.

Q. You were a director up to the time this convention met? A. Sure.

Q. Did you ever read Mr. Moffitt's speech? A. In this the 1907 convention?

Q. Report, I should say. It was a report from the fellow delegates and brother workers.

Mr. Mulholland:

6679 I object to that as not proper cross examination.

The Court:

Well, let us see what it is.

Mr. Merritt:

"The Loewe suit which was the outcome of the fight made by the United Hatters to establish fair conditions in the Loewe factory was instigated as a move to force this organization into disintegration. As a part of the fight against the non union Loewe factory we had as in other fights, extensively advertised and urged dealers and customers not to buy hats unless they contained the union label, and had as extensively ad-

6680 vertised the fact that the Loewe concern was not a union factory.

In consequence of this advertising campaign, a widespread boycott was made upon the Loewe product prosecuted by labor unions generally."

I am going to ask him if he read that?

The Court:

You may ask him.

Q. Did you read that? A. No, that is the first time I have ever seen the word "boycott" used by him.

Q. By Mr. Moffitt? A. Yes; I don't remember boy- 6681
cott before; it is news to me.

Q. Well, now, Mr. Pearson, you went around to several of the local unions, didn't you, in connection with the Berg fight? A. I did not.

Q. Didn't you come up here to Danbury with Mr. Sculley and others? A. I did.

Q. Was Mr. Daniel McGrath with you? A. I don't know the man.

Q. Was Mr. Brady with you? A. No.

Q. Who else was there with you? A. John Sculley and myself went there, and we found there Martin Lawlor 6682
the Secretary, and that gentleman James Maher, now Congressman. It does not have anything to do with this, no connection with this trial at all.

Q. What did it relate to? A. It related to different conditions that existed in various union shops, as I told you, it was immediately after the love feast, and they had the advantages over the other shops, and I wanted them all equalized and put them on a fair footing. That was our object.

(Fifteen minutes recess.)

JOHN REDWAY 6683

Sworn by the Clerk.

EXAMINED

By Mr. Mulholland:

Q. Where do you live, Mr. Redway? A. South Norwalk.

Q. Whereabouts in South Norwalk? A. 91 Ely Avenue.

Q. How long have you lived in South Norwalk? A. 22 years.

Q. Married man? A. Yes, sir. 6684

Q. Seven children, I believe? A. Yes, sir.

Q. How long have you been working at the hatting business? A. Since 1881.

Q. When did you first become a member of any hatters organization? A. 1884.

Q. And of what branch of the trade? A. Finishers.

Q. Are you still working at that branch of the trade? A. No, sir.

6685 Q. When did you quit working at the hatters trade? A. I work for myself. I have got a little store for myself, and I finish hats off for myself.

Q. How long have you been in business for yourself? A. Four years.

Q. Four years ago what were you doing then? Prior to the time when you went in business for yourself? A. I went in the saloon business four years before I worked, to the Crofut & Knapp hat shop.

Q. When was this? A. Four years ago.

Q. In about 1902 and 1903 what were you doing? A.
6686 I was in the saloon business.

Q. Where was your saloon located? A. No. 4 Mechanic Street.

Q. For what length of time were you engaged in the saloon business, how long were you in that business? A. 22 months or 23 months.

Q. Can you tell the jury when you opened up your saloon? A. In '92.

Q. Do you know what month? A. 1902, I couldn't tell you exactly.

Q. Was it in the spring or fall, or summer? A. I
6687 guess that was in the fall.

Q. Fall of 1902? A. Yes, sir.

Q. Then for 22 months you were conducting the saloon business? A. Yes, sir.

Q. During that time did you continue a member of the Hatters Union? A. No, I paid 50c a month dues, that is all.

Q. You didn't pay any percentages? A. No, sir.

Q. You paid 50c a month dues? A. Yes, sir.

Q. So as to keep yourself connected with the organization? A. Yes, sir.

6688 Q. For the last four years I understand you have been running a plant of your own? A. Yes, sir.

Q. What are you doing in that business you have now? A. I finish hats and sell them wholesale, and sell them at retail.

Q. Hire any men? A. Yes, sir.

Q. How many? A. I have got two men.

Q. Two men working for you? A. And myself.

Q. Do you remember at the time you were served with the papers in this writ, in this Loewe suit, do you know when it was? A. No I couldn't remember.

Q. You remember being served do you not? A. Yes, I heard something about that. 6689

Q. Well, prior to that time had you ever been an officer of your union? A. What's that?

Q. Prior to that time had you ever been an officer of your union? A. No, sir.

Q. Or a delegate to any of its conventions? A. No, sir.

Q. Or a delegate to the convention of the American Federation of Labor? A. No, sir.

Q. Did you ever read a publication, a magazine called the Federationist? A. No, sir, I couldn't read it. 6690

Q. You cannot read? A. I cannot read English.

Q. Cannot. A. I hardly can read at that time at all I can read now a little.

Q. Take it 10 or 12 years ago, how much English could you read? A. Nothing at all.

Q. Now you can read a little? A. Well, yes, sir.

Q. What is your nationality? A. I am a Hungarian.

Q. Prior to the time that you were served with the papers, and your property was attached in this case, did you know that your officers and agents were interfering with the sale of goods? A. No, sir. 6691

Q. Outside of Connecticut? A. No, sir.

Q. I mean interfering by threatening them or coercing them, or intimidating them not to buy? A. No, sir, I didn't know nothing about it.

Q. Did you know Mr. Loewe prior to the time of the suit? A. No, sir.

Q. Had you ever heard of him? A. I heard a little.

Q. You mean before suit was commenced? A. No, sir, I never heard of him.

Q. When the paper was served on you and your property attached, had you ever heard of Mr. Loewe or his business? A. No, sir. 6692

Q. Do you know who the officers of the United Hatters were in 1902 and '03? A. No, sir, I couldn't remember.

Mr. Mulholland:

You may take the witness.

CROSS EXAMINATION

By Mr. Merritt:

Q. Were you working at the trade in 1900? A. 1900?

6693 Q. Yes. A. Yes, sir, in the hatting trade.
Q. 1901. A. 1901, yes, sir.
Q. How long had you been working at the trade then? A. In 1901?
Q. Yes. A. Between 1901 and 1903, at that time, I quit that hat business and I bought a saloon.
Q. How long had you been working at the trade in 1901? A. In 1901 before?
Q. Yes. A. I worked at hatting since 1884, 1811, and I am a union man since 1884.
Q. Did members of the hatters union come to your
6694 saloon? A. Hatters union?
Q. Yes. A. Which hatters union?
Q. The one you belonged to? A. Oh yes, I have got some customers, yes.
Q. Some of the members were customers of yours? A. Yes, sir.
Q. In the year 1902 and '03? A. Yes, sir.
Q. Many of them? A. No, about four or five.
Q. Any of them hold office? A. I don't think so, no.
Q. Was Mr. Sculley a customer of yours? A. No, sir.
Q. Did you ever see the hatters journal? A. No, sir,
6695 I never did.
Q. Never saw it? A. I don't remember. When I see it I didn't read it.
Q. I say, didn't you ever read it? A. I don't think so.
Q. Wasn't it left in the factories where you were working in 1900 and 1901? A. I don't see any.
Q. If it was left in the factories where you were working you didn't know it? A. I paid no attention to it at all, because I couldn't read it, and I didn't pay no attention to it.
Q. You don't know whether it was left there or not?
6696 A. I don't, I couldn't remember.
Q. During all this time 1900, or 1898 to 1901, and a part of 1902, most of 1902, you worked in a union factory? A. Yes, sir.
Q. Along side of other union men? A. Yes, sir.
Q. Didn't you ever talk with them concerning your union? A. No. When we worked in the shop, we worked in the shop, and never talked about the union at all.
Q. Say that again? A. I never talked something of unionism, I never talked on unionism, and I never heard it.

Q. You never talked with anyone? A. No, sir. 6697

Q. Concerning the Hatters Union? A. No, sir.

Q. You never heard anyone talk about the hatters union? A. I never heard any, no, sir.

Q. During all these years did you work in a union factory? A. Yes, sir.

Q. Along side of union men? A. Yes, sir.

Q. And contributed money to this organization, you never exchanged a word with any of those men concerning the union? A. No.

Q. You didn't read the daily papers, did you? A. No, sir, I can't read. I can read now. 6698

Q. You continued a member of this organization after you were sued? A. I didn't understand that word.

Q. After this suit was started? A. When was it started?

Q. When did you go back to the union after 1904? A. After the saloon business in 1904, 1894?

Q. 1904. What time in 1904? A. I have been in the saloon business 22 months.

Mr. Merritt:

He has been a member all the while, but he has stopped paying dues because he wasn't working. 6699

The Witness:

I did.

ALBERT BERG,

Sworn by the Clerk.

EXAMINED

By Mr. Mulholland:

Q. Where do you live, Mr. Berg? A. South Norwalk.

Q. What is your number? A. 67 Meadow Street.

Q. You are a defendant in this case? A. Yes, sir.

Q. What is your age? A. Past 60. I was 61 this year. 6700

Q. Married man with three children? A. Yes, sir.

Q. How long have you lived in Norwalk? A. Ever since I am in this country. South Norwalk is my home.

Q. How long have you been in this country? A. Since 1873.

Q. Have you worked at the hatters trade during all that time? A. No, sir.

6701 Q. When did you first begin working at the hatters trade? A. 1875.

Q. What branch of the trade? A. Finishing hats.

Q. Can you tell the jury about when you became a member of the hatters, of the hat finishers organization? A. In 1877.

Q. Have you been a member ever since? A. I have been a member ever since.

Q. Do you remember when you were served with process, that is, with the summons in this case? A. Yes, sir.

6702 Q. And your property attached? A. It was not my property.

Q. Well, about that time? A. I was served with papers.

Q. Prior to that time, had you known Mr. Loewe? A. No, sir.

Q. Had you ever seen him? A. I had not seen him.

Q. Had you ever heard of him? A. No, sir.

Q. Then the first you heard of him was when you were sued? A. The first I heard of him was when that suit was started.

6703 Q. Have you worked in the Norwalk district ever since you began hatting? A. No, I worked in a good many districts off and on.

Q. Mr. Berg, prior to the time that summons was served on you in this case, had you ever heard or read that the officers or agents of your organization were boycotting the goods of manufacturers in cities other than Connecticut? A. No, sir.

Q. You have a general idea of what I mean by boycotting? A. I do, I suppose.

6704 Q. I mean of course calling upon people and trying to persuade, trying to intimidate or to coerce them not to buy the products of anybody? A. Yes, sir.

Q. Well, prior to the time you were served with the summons in this case had you heard that the officers or agents of your organization were following the goods of Mr. Loewe into states other than Connecticut to prevent their sale? A. I did not.

Q. I wish you would tell the jury to what extent you attended meetings of the hatters union say between 1896 and 1903? A. I didn't attend any.

Q. You kept away entirely? A. Well, I am exempt for the last 10 years, and before I didn't go very much. 6705

Q. Before that you didn't go? A. I didn't work at hatting all my life time any way, I worked at different occupations between times.

Q. Do you read the hatters journal? A. I did, yes, sir.

Q. To what extent? A. Oh about death benefits, etc., that is when I picked it up in the shop.

Q. Did you ever read anything in the hatters journal about the boycotting operations of your organization? A. No, sir. 6706

Q. I understand you never heard of Loewe at all? A. No, sir, not before the papers were served.

Mr. Mulholland:

That is all.

CROSS EXAMINED

By Mr. Merritt:

Q. How long did you work in Norwalk prior to 1903? A. 1903?

Q. Yes. A. Well I worked at hatting from '75, 1875, until '82, then I worked at the grocery business five years, and later on, off and on, I helped my father-in-law in the hotel business. 6707

Q. I am trying to find out how long prior to 1903 you worked at the hatting business in Norwalk? A. Prior to that?

Q. Yes. A. Well I was a member of the organization all along.

Q. Were you working there we will say from 1898 to 1903? A. 1898?

Q. Yes. A. I guess I did, yes. Sometimes I worked I came out for six months, sometimes for three months, and then went back to the hatting afterwards again. 6708

Q. You worked in the factory of F. Berg & Co. didn't you? A. I did several times.

Q. Didn't you work there shortly after they had their trouble with the Hatters Union? A. I was in Newark for about six weeks, and then I found out there was work in Berg's and I went there then.

Q. Wasn't it right after the Bergs had been unionized? A. Why I understood, so I understood, yes, sir.

6709 Q. You knew they had just been unionized? A. That the shop was unionized, so I heard, and I got shopped there.

Q. You knew it had just been unionized? A. Yes, I heard so in Newark, the shop had been unionized, and I went there.

Q. You knew it had been unionized after a fight with your organization, did you not? A. Well we often had strikes in hatters shops on turnouts, when the bill of prices came out, that was a matter that occurred quite often, or used to occur.

Q. That is, in union factories, strikes occur quite often?
6710 A. Yes, when the bill of prices comes out, often.

Q. You knew when you went to F. Berg & Co. there had been a strike there to unionize it? A. Well I know the shop, the first thing after I got there I found there was work there, so I went there—

Q. Just answer my question. When you worked in Newark, and when you went to Berg, didn't you hear that Berg had just been unionized after the strike? A. Yes.

Q. That it was a strike that brought it about? A. I knew it was a strike, but I didn't know what it was about.

Q. You knew there had been a strike? A. Yes, sir.
6711 Q. Didn't you know they had been engaged in a fight with your organization? A. I did not.

Q. For a long while? A. I did not.

Q. Didn't you know agents had been sent around the country to try to stop the sale of their goods, and that was the reason they had to unionize? A. I did not. I knew there was agents out previous to that to advertise the label in the country, but I never heard at the time—

Q. You never heard at that time when you were down in Newark and went to F. Berg and Company, that their fac-
6712 tories had been unionized after the agents had been sent out on the road to prevent the sale of his goods? A. No, sir.

Q. Did you ever hear of the fight of Henry H. Roeloff & Company? A. No.

Q. Didn't you know that Roeloff had sued your organization for $250,000? A. I did not, sir.

Q. Never heard it until you came up here? A. No, sir, never heard it before.

Q. You never knew at any time, or read it or heard it, that your organization or its officers or agents, had been at-

tempting to prevent the sale of non-union goods? A. No, sir. I heard agents went out to advertise our label. 6713

Q. Now you stated that you saw the Journal in the factory where you were working? A. Yes, sir.

Q. Over what period of time did you see the Journal? A. I couldn't tell any particular time.

Q. Before this suit was started? A. Oh I don't know when the trouble came out first really, I didn't take it home. I occasionally took and looked into the Journal when we had it handy, when we had time, when it was handy.

Q. Now that brings me to the point; occasionally work is light in the factories, isn't it? A. Yes, sir. 6714

Q. And the men sit around? A. Oh no.

Q. Don't they sometimes? A. No.

Q. Aren't there occasions when the work stops for a little while and the men sit around a little while? A. No.

Q. Never happened in the factories where you were? A. No, sir.

Q. What do you mean when you say you had time? A. We take our lunch in the shop.

Q. Lots of men did that? A. I suppose so.

Q. Do you know in factories where you worked whether the men did that or not, they do in factories you work in? A. Sure, some of them. 6715

Q. During the noon hour they sometimes look at the Journal? A. Once in a while, yes, sir, when I get it handy.

Q. Do you know how long a period of time, over what period of years it was that you didn't read a Journal there from time to time? A. No, it was not a period of years at all, it was only occasionally.

Q. What? A. It was only occasionally when I picked up the Journal.

Q. How wide apart were those occasions? A. I couldn't tell you that. 6716

Q. You don't know? A. No.

Q. It may have been over a period of several years? A. Yes.

Q. You did talk with your men occasionally concerning your organization? A. Not very often.

Q. You did occasionally? A. Sometimes, yes.

Q. When there were matters of great importance in the trade why that was discussed by the men working together? A. The most important business was our bill of prices.

6717 Q. Just answer my question. When matters of great importance occurred, you sometimes talked those matters over among the trade? A. I don't understand among the trade at all, what do you mean by that question of great importance?

Q. I mean for instance when your organization was sued for $250,000? A. I didn't know.

Q. Do you remember reading something about the death list in your journal? A. Yes, sir.

Q. That is the only thing you remember? A. That is the only thing I read.

6718 Q. You are willing to swear that is the only thing you ever read in the journal? A. Yes, sir, I will swear that is.

Q. Did you read the journal before it was issued in this smaller form? A. I don't know.

Q. That form? (Showing the witness a paper.) A. I guess that is it.

Q. Did you ever see it in this form? A. No, sir, I did not.

Q. Did you read any of the daily papers? A. No, sir.

Q. Regular reader of the daily paper? A. Some times not, not regular, when I get time when I get home, when I ain't too sleepy.

6719 Q. Well, what papers do you read? A. Why, sometimes the Tribune, the Press, the Journal, anything, any paper I can get hold of.

Q. Now this is the question I put to you two years ago, and this is your answer: "(Q.) What daily paper did you read in 1902 and '03? (A.) Well, we have two in South Norwalk, the Sentinel and the Hour. I generally read one of the kind, which one I get hold of." A. That is the local papers.

Q. Then you did read those? A. Oh sometimes, yes. I picked them up sometimes home.

6720 Q. Weren't you a regular reader of it? A. My family is, yes, sir.

Q. Don't you remember reading in these papers on matters relating to your organization? A. No, sir.

Q. Are you willing to testify you did not read anything in the papers? A. I am willing, yes, sir.

Q. Let me finish the question; are you willing to testify that you did not read anything in these papers relating to your union? A. No, I never looked for union news in the local papers, I am sure.

Q. Are you willing to testify you never did read anything in either of those papers concerning your organization? A. I am willing, yes, sir. **6721**

Q. Now as I understand your testimony, Mr. Berg, you are willing to swear positively over a period of 15 years back, that you never heard or read anything of any character or nature whatsoever to the effect that your organization was attempting to prevent the sale of non union goods, or the goods of any manufacturer? A. Well, you say fifteen years ago?

Q. Yes? A. I know since the charge was made, I heard it. **6722**

Q. Well, prior to the suit? A. Prior to the suit yes sir.

Q. You are willing to swear that, are you? A. Yes, sir.

Q. You continued a member of this organization after you were sued? A. Yes.

Q. Continued contributing money to its support? A. I am paying into it now.

Q. And you made no effort to prevent the re-election of the same officers? A. No.

Q. Made no protests? A. No. **6723**

Q. Did you read the complaint? A. What?

Q. Did you read the papers that were served on you? A. I did, yes, sir, some of them.

REUBEN JOHNSON,

Sworn by the Clerk.

EXAMINED

By Mr. Mulholland:

Q. What is your full name? A. Reuben Johnson.

Q. Where do you live, Mr. Johnson? A. Bethel, Connecticut. **6724**

Q. How long have you lived in Bethel? A. Oh it must be in the neighborhood of thirty years, I should think, and possibly a few more.

Q. Married man? A. Yes, sir.

Q. Are you a defendant in this case? A. Yes, sir.

Q. What is your age? A. 64.

Q. Where were you living in the year 1902? A. Bethel.

6725 Q. Do you remember of hearing of some trouble in the factory of Mr. Loewe in Danbury? A. Yes, sir.

Q. How long was it after the men went out on strike that you first heard of the trouble? A. I don't know as I can tell anything about that.

Q. Can you recollect how it came to your notice, whether someone told you, or whether you read it? A. I can't tell just how it did come to my notice. It might have been hearsay, I might have read it.

Q. Just remember that you heard there was trouble there? A. Yes.

6726 Q. Did you know the men had come out of the shop? A. Why I couldn't say positively that.

Q. How long have you been working at the hatting business? A. About forty-seven years I think.

Q. Can you tell the jury how long you have belonged to the union? A. I have always belonged to it. I entered as an apprentice forty-seven, about forty-seven years ago.

Q. In what branch of the trade, whether making or finishing? A. Finishing.

Q. How long have you been working in the Danbury district? A. I think about 12 or 13 years, I am not sure,
6727 I think it is in that neighborhood.

Q. Now after the Loewe trouble, or after you heard of the Loewe trouble in 1902, were you then working in Bethel or in Danbury? A. In Danbury.

Q. In whose factory? A. The Danbury Hat Company.

Q. Was that a union or non union factory? A. Union.

Q. Now, Mr. Johnson, I want you to tell the jury with what frequency you attended the meetings of your Local say from 1896 up until 1903? A. I don't think I ever at-
6728 tended over one or two meetings, I can't recall. I recollect attending one meeting, but that was not a regular meeting, I think it was called for something, some local affair, I don't know what it was.

Q. Was that a meeting held in Danbury or in Bethel? A. In Danbury. It was a meeting at the time of the strike when they came up and talked to us during the Loewe strike, that I used to attend two or three meetings? It has been one of those meetings.

Q. At what strike? A. At the time of the strike about three years ago. 6729

Q. I am talking now about the time prior to the commencement of the suit, Mr. Johnson? A. Oh, excuse me.

Q. I want to know how many meetings you attended from '96 say up until the time you were served in this suit with summons? A. Prior to 1906?

Q. Prior to the time your property was attached, from 1896 up until your property was attached? A. I don't know, I don't know as I can recollect any, I can't recall any.

Q. You can recollect one meeting since that time? A. Yes, sir. 6730

Q. That is a regular meeting of the organization? A. Yes, that was not a regular meeting, not as I understand it.

Q. State whether or not during the years that they published the Journal, and prior to the commencement of this suit, you saw it in the shop where you worked? A. Yes, sir.

Q. And did you read it? A. Well occasionally I would give it a glance, scanned it sometimes.

Q. Did you ever see a publication known as the Federationist? A. I can't recollect whether I did or not.

Q. Do you know who publishes it? A. No, sir.

Q. Now prior to the time you were served with the summons in this case, had you ever heard through conversation, or through reading, that the officers and agents of your organization were following the hats manufactured by hat manufacturers into states other than Connecticut, and of their attempting to prevent their sale to customers or by customers of those states? A. I knew the officers were working for the interests of our trade. 6731

Q. I am asking you whether or not you had ever heard by any one telling you, or by reading it anywhere, that your agents or officers were boycotting the goods shipped into states other than Connecticut? A. I couldn't say whether they were boycotting or not. All I knew about it was what little I picked up in hearsay, and the little I read in the Journal. 6732

Q. Tell me what you read, so we will know the effect of it, and where you heard it and when? A. It is pretty vague, in the inter state business, I can't tell you what I heard as I know of. As I say, I read very little in the Journal, I can't remember a thing. I know there is a reference, I have a vague recollection with regard to a reference to either Berg

6733 or Roeloff in the Journal, that is about the only thing I can recollect.

Q. Did you know where the Berg plant was located? A. I couldn't say, I don't know now.

Q. Do you know where the Roeloff plant was located? A. Well—

Q. At that time? A. I wasn't positive, I presumed it was in Philadelphia, but I wasn't positive, I couldn't say positively.

Q. Now prior to the time this suit was commenced, did you know Mr. Loewe? A. I might have heard of him, and
6734 I might not, I couldn't say definitely whether I ever heard of him or not.

Q. Prior to that time did you know that your officers or agents were following Mr. Loewe's goods into states other than Connecticut, and boycotting them there? A. I can't recollect it for certain, I can't recollect whether I knew the officers were following Loewe or not before the trouble commenced. Yes, well I do recollect something, I think I have a vague recollection in the Journal of reading something about —no, I can't say as to that, I can't remember exactly. I do
6735 recollect though, something about Loewe before the trouble commenced.

Q. Before what trouble commenced? A. Before the attachments were put on.

Q. Well what did you hear? A. I couldn't say what I did hear.

Q. What did you read?

The Court:

He says he don't remember.

Witness:

I can't remember what I have heard, and what I read.

6736 Q. Well, Mr. Johnson, prior to the time you were sued by Mr. Loewe, were you a party to any combination the purpose of which was to destroy Mr. Loewe's inter state commerce? A. Why no, not Mr. Loewe's, I didn't know, and I didn't know anything about it. I don't know as I know anything about it at all until the thing was brought up with the writ.

Q. Did you, prior to the time you were sued in this case, know that you were a party to a combination, the purpose of which was to destroy anybody's inter state commerce, that is, their commerce in states outside of Connecticut? A. Well

I didn't know definitely I entered into a conspiracy. I knew as **6737**
I said, what I heard about the officers being on the road trying to exploit the union label, that is all I knew.

Q. Is that everything that you knew about it? A. That is all I knew, it was in a general way, they were trying to exploit the union label, but I don't know as that was it.

Q. Can't you straighten up and think about that matter and see if you can recollect what you ever read? A. I can't recollect what I have read in anything definitely.

Q. Well have you given the jury all the information you had on the subject? A. I think I have, I don't know as I could give anything more on the subject in regard to hats. **6738**

Mr. Mulholland:

All right, you may take the witness.

CROSS EXAMINED

By Mr. Merritt:

Q. Well it is pretty difficult to remember what happened ten years ago, isn't it? A. Yes it is for me.

Q. You read the Danbury News, don't you? A. Yes, sir.

Q. More or less regular reader of it? A. Yes, sir.

Q. And you heard of Loewe's trouble when the men **6739**
were out of the factory, didn't you? A. Yes, sir.

Q. Do you know whether you read that in the Danbury News? A. Why I suppose I read news about the trouble, I couldn't help it, I read things as they went in, I can't tell things specifically, but having no definite knowledge, I don't that I read things pertaining to the case when I opened it.

Q. You read news pertaining to Roeloff when that trouble began? A. As I said, I read a little item, a little something in the Journal in regard to either Roeloff or Berg, I don't know which one it was, whether it was Roeloff or Berg.

Q. The Danbury News of 1902 there appeared an ac- **6740**
count in several papers to the effect that this suit for $250,000 had been brought by Roeloff because they were boycotting him, etc.; now don't you recall reading anything about that? A. I can't recall whether I heard about it, I can't recall when I read it.

Q. You heard about it, but you can't recall whether you read it or you heard it? A. No, sir.

Q. You were a pretty general reader of the News, wasn't you? A. Some days, it may have been a week, it would go

6741 over and I would not. I have taken the News for years. Sometimes I don't read it, and sometimes I have when I get time.

Q. You don't recall what it was you read in the Journal about Berg or Roelofs? A. No I don't recall, I know it was a case that was about finished, and there is a reference to the case, I think the case was finished, and I read something in regard to that, but I don't know, I can't tell just what it was.

Q. You don't recall whether or not you read something about Loewe in the Journal? A. I don't recollect of reading anything, I can't recall anything definite, I don't know as
6742 I read anything in the Journal in regard to Loewe.

Q. Did you read the complaint that was served on you? A. I think so.

Q. Well I don't think I want to cross examine you any more. You continued a member of the Union, didn't you? A. Yes, sir.

Q. And made no protest? A. No, sir.

Q. Made no attempt to prevent the re-election of the same officers? A. No, sir.

JAMES S. WHITNEY,

6743

Sworn by the Clerk.

EXAMINED

By Mr. Mulholland:

Q. Where do you live, Mr. Whitney? A. South Norwalk.

Q. How long have you lived in South Norwalk? A. 46 years.

Q. You are a defendant in this case? A. Yes, sir.

Q. How old are you? A. 65.

Q. Married, and five children? A. Yes, sir.

6744 Q. Prior to the time that the summons was served on you in this case, did you know Mr. Loewe? A. No, sir.

Q. Had you ever heard of him? A. No, sir.

Q. Did you know where he lived prior to the time that he sued you? A. I do not.

Q. How long have you been working at the hatting business? A. All combined you mean?

Q. Yes, when did you start? A. I started in—well I can say I have been working at it ever since 1864.

Q. When did you first become a member of one of the Hatters Unions? A. In 1866. 6745

Q. Which Union was that? A. Hat makers.

Q. That was then known by another name, wasn't it, the Fair Hat Makers Association? A. The Fair Hat Makers Association.

Q. Were you a member of that association in 1896 when it became a part of the United Hatters of North America? A. Yes, sir.

Q. From 1896 on until the time that you were sued, you continued to be a member of the organization? A. I continued to be a member. 6746

Q. You are a member of it today, are you? A. Yes, sir.

Q. Did you know anything about the Berg trouble? A. No, sir, I did not.

Q. Know where the Berg factory is located, did you know at that time? A. Yes, sir, I knew it was located in Orange, New Jersey.

Q. Prior to the time that you were sued, did you know where the Roeloff factory was located? A. From what I heard only, I never see the factory, in Philadelphia.

Q. Now, Mr. Whitney, prior to the time that these papers were served on you in this case, did you know that the officers and agents of your organization had conducted a boycott in states other than Connecticut against the product of Berg or Roeloff? A. I certainly did not. 6747

Q. And prior to the time you were served with the summons in this case, did you know that the officers and agents of your organization had been conducting a boycott against the goods of Mr. Loewe? A. No, sir, I did not.

Q. By a boycott, of course I mean going into these other states and persuading, coercing, or intimidating his customers, is that what you understand by it? A. That is what I understand, sir. 6748

Q. Where were you working along in 1902? A. Croft & Knapp's, South Norwalk.

Q. How long had you been employed there at that time? A. At that time about four years I guess.

Q. Was that a union shop? A. Yes, sir.

Q. Did you from time to time see the Journal there, seen it brought into the factory? A. Yes, sir.

6749 Q. I mean prior of course to the time this suit was commenced? A. Lying there on the benches, out of the way.

Q. To what extent did you read the Journal? A. Very little, didn't take much interest in it.

Q. Prior to the time this suit was commenced, with what degree of regularity had you attended the meetings of your local? A. Well not very regularly in some years, and some I did more.

Q. I understand you to say you have never had any knowledge or information that the officers of your organization were conducting these inter state boycotts? A. That is
6750 what I said.

Q. Now, Mr. Whitney, were you ever intentionally a party to any combination or conspiracy to destroy Mr. Loewe's inter state commerce? A. I was not, sir.

Q. Were you ever knowingly a party to any combination of men whose purpose was to boycott his goods in states other than Connecticut? A. No, sir.

Q. Can you tell the jury about how many hat workers there are in the Norwalk district? A. At the present time I couldn't tell you.

6751 Q. How many there were in 1902 and '03? A. Oh I should think there was 500 or 600 in both branches, I couldn't tell the exact number, no, sir.

Q. Do you know how many are defendants from Norwalk in this case? A. No, sir.

CROSS EXAMINED

By Mr. Merritt:

Q. Were you a reader of any daily papers in 1900 to 1903? A. Daily papers?

Q. Yes. A. You mean local papers?

6752 Q. Yes. A. Very seldom glanced at them.

Q. Didn't you ever read the Norwalk Hour? A. Very little.

Q. Didn't you read the Evening Sentinel? A. No, sir.

Q. You read the Norwalk Hour occasionally? A. Very little of it.

Q. What part of Norwalk did you live in? A. South Norwalk.

Q. How far from the station? A. About fifteen minutes walk.

Q. About fifteen minutes walk? A. About fifteen minutes walk. 6753

Q. Now you stated what when you were working in Crofut & Knapp's that you occasionally saw the Journal around? A. I have seen the Journal lying in the shop, yes, sir.

Q. Distributed in the factory where you worked? A. No, I never saw it distributed.

Q. Where did you see it? A. Saw it lying on the bench by the desk around by the hats.

Q. In the room where you worked? A. No, not where I worked, they were around the hats where we got our work, and brought it back in again. 6754

Q. That is, there were a pile of these placed in some spot where you went to get your hats you had to work on? A. I see some there on the bench where everybody got weighed out.

Q. They were there, and everybody could see them? A. Everybody could see them, yes, if they wanted to.

Q. It was there, I suppose for the men to read? A. Oh yes.

Q. So that every man working in the shop who wanted to go and read it, would find out, it is under his nose, if he chose? A. He could pick up one if he wanted to, yes. 6755

Q. You knew it was the Journal of the United Hatters, didn't you? A. I could read it, yes.

Q. You knew it was put there in order to inform the members as to what was being done? A. Oh they are there for each member to take if they wanted to and read it, that is my understanding.

Q. For the purpose of informing the members as to what the organization was doing with their money? A. I expect that is what the Journal is for, I suppose it was.

Q. And you occasionally read it? A. Very little of it. 6756

Q. You read it occasionally? A. Not but a very little of it, never went through it, never looked it over, didn't care nothing about it.

Q. Weren't you interested in knowing what your organization was doing? A. Well not very much.

Q. Or what was being done with your money? A. In answer to that question, I supposed that we had honest and competent officials to look after that.

6757 Q. And after the suit was brought you made no attempt to prevent the re-election of the same officers? A. No, sir.

Q. You still supposed you had honest and competent officers? A. I supposed we were.

Q. And were satisfied with what they had done as far as you knew? A. I was, sir.

Q. Can you think of anything which those officers did not do to bring the operations of your organization to your attention? A. Didn't do?

Q. Yes. A. Well I don't know as I exactly understand that question.

6758 Q. These matters were reported upon at your local meetings; you say you did not go to the local meetings, is that true? A. I didn't say, I said I did attend them occasionally.

The Court:

Is it your understanding now that the officers did all they could to bring the matter to the attention to all the members of the Union?

Witness:

I always supposed so, yes, sir.

Q. Do you recall what you read in the Journal? A. I did not.

6759 Q. It might have been about boycotting as far as you know? A. I don't ever remember reading the word "boycott" in it.

Q. And it might have been concerning efforts made to prevent the sale of non union goods as far as you recall? A. I don't think I ever read that.

Q. You mean you cannot remember? A. I did not read that.

Q. You mean that, you mean positively that you did not read any? A. I did not read anything of the kind in the Journal.

6760 Q. And you are willing to swear to that, you deny you ever heard or read anything to the effect that your Union or its officers or agents were trying to prevent the sale of any non union goods? A. Only by introducing the label, that is all.

Q. You never heard or read anything to the effect that they were directly aiming at the prevention of the sale of any goods of any manufacturer? A. A boycotting case I mean.

Q. I guess I mean the same as you mean by boycott, but I don't want any misunderstanding about it? A. I don't.

Q. You are willing to swear positively on that point? **6761**
A. I am.

Mr. Merritt:

All right.

MYRON R. MORGAN,

Sworn by the Clerk.

EXAMINED

By Mr. Mulholland:

Q. Where do you live, Mr. Morgan? A. Bethel.

Q. How long have you lived in Bethel? A. Oh I guess about 68 or 69 years, along there.

Q. You are a defendant in this case? A. Yes, sir. **6762**

Q. You have lived in Bethel all your life then? A. All my life with the exception of the first few days probably.

Q. How old are you? A. In my 69th year.

Q. Can you tell the jury how long ago it was you first began to work at the hatting trade? A. I have worked at it more or less ever since I was about sixteen or seventeen years old.

Q. When did you first become a member of a Hatters Union? A. When I was twenty-one.

Q. And you have been working at that ever since? A. I have worked over 50 years. **6763**

Q. You have not worked at other work? A. Worked over 50 years at hatting.

Q. Are you working now at hatting? A. Yes, sir, every day when I can get there.

Q. How long has it been, Mr. Morgan, since you have attended a meeting of the Hatters? A. Over twenty years.

Q. Then you have not attended a meeting of your local since the United Hatters of North America was organized? A. I have not attended them in a long time, a great while. I am exempt at fifty, and it was a long time before fifty that I didn't go there at all. **6764**

Q. Did you know Mr. Loewe prior to the time that you were sued? A. I never knew the man in the world until I saw him here.

Q. You know where his factory is? A. No, sir, I don't even know today where his shop exists.

Q. And you live in Bethel? A. I live in Bethel and work in Danbury.

Q. Prior to the time that you were served with the papers in this case, Mr. Morgan, did you have any knowledge

6765 that the officers or agents of your organization were engaged in boycotting the goods of manufacturers of hats in states outside of Connecticut? A. No, sir, I didn't.

Q. Did you ever hear of the Berg trouble and Roeloff trouble? A. No, sir.

Q. You know where their plants are located? A. No, only just what I heard you talking about there today, that is all, I never attended them.

Q. Prior to the time your property was attached in this case, had you ever knowingly been a party to any combination of men whose purpose was to interfere with Mr. Loewe's inter
6766 state commerce? A. No, sir.

Q. Or whose purpose was to boycott the goods of Mr. Lowe in states other than Connecticut? A. No, sir.

Q. During the last few years, that is, prior to the time that your property was attached, were you working in a union or non union shop? A. I always worked in the union shop.

Q. Did you see what is called the Hatters Journal there? A. I have seen the paper lying on the bench that they told me was the Hatters Journal. I didn't read it. I had trouble with Mr. Ellendorf years ago, and I said that was the last hatters paper I would ever read, and I have never looked
6767 in one since.

Q. Were you familiar with the publication known as the Federationist? A. No, sir.

Q. Do you know who publishes it? A. No ,sir.

Q. Ever had a copy? A. Not that I know of.

Q. What was that man's name you had trouble with? A. Ellendorf, I think it was.

CROSS EXAMINED

By Mr. Merritt:

6768 Q. He printed some paper in Norwalk? A. Yes, sir, and when I went to Bethel he went there and he tried to get a vote for each one of us to pay a dollar, to get each one of us members, and he went through the shop, and he made a fight, and he made a terrible kick, and I said if he was going to force every one to buy whether we wanted to or not, why I would not look at another hatters journal or paper, so we dropped it, and he couldn't get a vote in that district to force every member to buy one.

Q. That has nothing to do with this Journal? A. That is my point, that I did not read it, and I said then that I never

would look at another hatters journal. It offended me so I did not read it. 6769

Q. How big a place is Bethel? A. Now I couldn't tell you, I think there is 700 or 800 voters, it appears to me.

Q. It was not of that size in 1902 and '03? A. No, it was not as large as that then.

Q. What? A. It couldn't be as large as that then, the place is growing every year you know.

Q. In 1903 it wasn't as large? A. Why no, it couldn't be as large as it is today.

Mr. Davenport:

In the whole town he means. 6770

Q. In the whole town, Bethel, of course he means the whole town of Bethel. Bethel is not a city, is it? A. No, sir.

Q. The only industry in Bethel is hatting, isn't it? A. Why yes, there is a little silk mill there.

Q. How many people employed are there? A. In 1902 about 16.

Q. Well the hatting is the only industry of any importance? A. Yes, sir.

Q. And every factory there is a union factory? A. A union factory. 6771

Q. And was in 1902 and '03? A. Well I think there was then, now I am pretty sure there was, I wouldn't be positive now. I think they were all union men.

Q. How near is it to Danbury? A. About three miles.

Q. Connected by trolley? A. Yes, sir.

Q. And the matter of the greatest importance or interest in Bethel is the hatting industry, isn't it? A. Yes, sir.

Q. And the Hatters Union is a very important matter in Bethel, isn't it? A. Why I couldn't say, I believe it is, but I haven't attended the meetings in a good many years you know. 6772

Q. Are you personally acquainted with Mr. William P. Bailey? A. I am, yes, sir.

Q. He is secretary of your Union for a great many years, isn't he? A. I believe so.

Q. Didn't you ever talk with Mr. Bailey concerning the operations of your Union? A. No, sir, I never had anything to do with Mr. Bailey in regard to it.

6773 Q. You never exchanged any conversation with Mr. Bailey concerning your Union? A. No, I only see him on the street. I have known him ever since I have been in Bethel pretty near, just to pass the time of day with him is about all.

Q. And the local papers, do they have any in Bethel? A. They have got none there in Bethel.

Q. Generally take the Danbury News? A. Some people does. I did not then.

Q. That is the only local paper they depend on? A. That is what most of them depend on.

6774 Q. You were taking it in 1902? A. No I was not, I was buying a New York paper.

Q. Well isn't it true, the principal readers of the News are union men, members of your organization? A. Why in Bethel they are, yes, yes, sir.

Q. And they printed news for their readers, pertaining to the hatting business, and haven't you read in the Danbury News, or seen in the Danbury News, articles relating to the hatting business? A. Not at that time I did not, for I tell you I did not read it then. I bought a New York paper.

6775 Q. Now during all the time you worked in a Union factory, haven't you discussed with the men working with you? A. No, sir, I have not. You see I worked in the curling room, and there is never hardly anything said in the curling room about hatting. If I was in the finishing room, there may have been. There is only two men working in the room where I work, and have worked for four or five years, only two of us in there.

Q. That is, there is the finishing room and the making room? A. Yes, there is more men there, and more chance for an argument.

6776 Q. Haven't you discussed the affairs of your union with your fellow townsmen? A. No, sir.

Q. Never? A. The only thing I ever discussed with them was Martin Lawlor, he lived nearest me, and when my bank account was attached, why I tried to get him to get it released there, but he would not do it, and I could not get it released until I came in Danbury.

Q. Your bank account was finally paid to you in full? A. Not until I got the Danbury district to work at it. They paid me.

Q. Who paid the money to you? A. Why Shalvoy gave me the check, I think it was. I think it came from Martin Lawlor though. **6777**

Q. Mr. Hugh Shalvoy? A. Yes, sir.

Q. Haven't you discussed with Mr. Lawlor the affairs of the Hatters Union from time to time? A. Not since that attachment was put on, only when I got my bank account released, that was after the attachment was put on.

Q. You say Mr. Lawlor was a neighbor of yours? A. Yes, sir.

Q. Lived next to you? A. Second or third house.

Q. As I understand it, you never heard anything or read anything about the Hatters organization being engaged in any attempt to prevent the sale of non union goods? A. I don't know a word about it, I didn't know a word about it until after Chris Lee came back, I know when he was sick, I know we helped to pay his expenses on the road. He came back and he told me something about it, it was about five or six years ago. **6778**

Q. Chris Lee was an agent? A. Chris Lee was an agent, I didn't know anything about it until what he told me five or six years ago, or five and a half.

Q. Where is Mr. Lee now? A. The last I heard of him I think he was in Brooklyn, or New York somewhere. **6779**

Q. He is not in Danbury or Bethel? A. I don't think so.

Q. Didn't you vote to have him appointed an agent? A. No, sir, I didn't know he went on the road until about the time he was coming back, about the time he was coming back, one of the officers in Danbury was asking me if there was a chance for him to get shopped down there, he said he got back from travelling on the road on the label.

Q. You continued a member of the union after you were sued? A. Yes, sir.

Q. Continued to pay dues? A. Yes, sir. **6780**

Q. Made no protest? A. What else could I do to get a living to take care of my place?

Q. You made no effort to prevent it or have the organization change its course of dealing? A. No I did not.

Q. Made no effort to prevent the re-election of the same officers? A. No, sir.

Court adjourned until 10 A. M. Wednesday.

Wednesday, October 2nd, 1912,

Morning Session, 10:00 o'clock.

6781 Mr. Mulholland:

If the court please, in order to get rid of the necessity of calling a hundred and some odd defendants we have agreed upon a stipulation which we desire to read into the record at this time:

"To save the time and expense of examining a great number of defendants whose relation to the case is supposed to be substantially alike, it is stipulated that the defendants whose names are annexed to this stipulation would if called, testify in effect:

6782 "That they had never held office in any local or national union and were never delegates to any convention; that they had no information of any trouble in the Loewe factory until after the men were out; that they were not regular readers of the Journal of the United Hatters and do not remember reading the printed reports of the conventions of the United Hatters; that to the best of their recollection they did not know prior to the commencement of this action that he officers or agents of the United Hatters had followed or were charged with following the customers or goods of any hat manufacturer in other states for the purpose of restricting or preventing the sale of such manufacturer's hats; that to the best of

6783 their recollection they never read in the Hatters' Journal, or elsewhere any statements to that effect; that they were not regular attendants at the meetings of their respective unions and to the best of their recollection were not present at any meeting where the proceedings of conventions were reported on, or the Berg or Roelofs troubles reported on or discussed; that to the best of their recollection they never heard of the suit brought by Roelofs against the United Hatters; that they knew there were agents of the United Hatters on the road but supposed that they were employed to advertise the union label and promote the sale of union made hats; that those of them

6784 who lived in Danbury received the notice, "Exhibit 86"; that after this suit was brought they received the letter from Mr. Connolley relative to employment of counsel and signed and returned the form annexed thereto (said letter and form being the same as has been read in evidence from the Danbury News of September 14th, 1903); that from 1900 to 1903 they read with more or less regularity some local newspaper in their respective towns, but not completely or invariably, and to the best of their recollection they do not remember reading anything therein or elsewhere about the methods employed to con-

strain manufacturers to unionize their shops; that those of them who testified in the former trial were paid by the United Hatters for their time and expense in attending as witnesses; and that after this suit was brought they continued to pay dues and made no protest and did nothing to prevent the re-election of the same officers as before." 6785

Now add this note: "The last paragraph as to the payment of dues, etc., is subject to the defendants' exception heretofore noted in this record and is admitted by the court solely as a matter of cross examination bearing upon the truthfulness of the testimony in chief."

Mr. Mulholland: 6786

This stipulation includes the following defendants:

Peter J. Brennan, Theodore Bright, Byron S. Brooks, Chauncey H. Butler, James P. Callahan, Achille Canale, Thomas H. Cassidy, William Clancy, Elmer R. Clark, John H. Collins, Lewy W. Comes, Michael W. Corbett, James D. Costello, Byron W. Crane, James Crotty, John Crotty, Peter T. Currie, William Deakin, James Dillon, John Dyer, Patrick Ellegett, Carl Erdman, Patrick J. Fisher, Thomas Foley, William Geartner, Wright Hampson, David J. Hardy, Alexander Harkness, John Harkness, Patrick Hart, John Hassett, Stephen Havren, Michael Hennessy, Charles A. Hodge, 6787 Adolph Holdeichel, Patrick T. Hunt, Charles Hurd, Michael Hurd, Patrick Jeffrey, Daniel Kearns, Martin Keating, Thomas Keenan, Michael F. Kenney, Charles J. King, John Leonard, Thomas Leonard, Michael F. Lynch, John Morris, Jeremiah McCarthy, Patrick J. McCarthy, Martin McCue, James McGlone, John McGlone, Patrick McGrath, Thomas McHugh, Frank Meath, Henry Messner, H. C. Michael, George Miller, Gustave Mougin, Daniel Murphy, Timothy Murray, Peter O'Boy, Daniel J. Osborne, George H. Phillips, Peter Picken, Christian Rheinhold, Frank Rhode, Frank Seaman, Frederick Stahl, George Stuckey, Michael Sullivan, William S. Sullivan, 6788 Joseph Tosi, Thomas E. Waters, Samuel S. Wilson, Edward Cunningham, Addison F. Hathaway, Peter Kearney, Patrick Keating, James Kinnane, Charles Moore, S. Wallace Osborn, Frederick Benedict, Virgil Dibble, T. Archibald Evans, Charles Frost, John Halpin, John Kane, Barney Murphy, Owen Murray, William Ochs, William Ohler, Levi Short, William Stone, Myron Trowbridge, Patrick Troy, Andrew Aitkin, Daniel H. Barnes, Nicholas W. Barzin, John M. Blake, Nelson Booth, James H. Boughey, Thomas Boyd, John E.

Paul, Owen Reiley, Daniel Riordam, John E. Rooney, Thomas M. Saunders, Max Singerwode, Charles Smith, Ernest Talmadge, Frederick Taylor, Peter J. Ward, W. J. Weisheit.

Mr. Merritt:

Now, Your Honor, I wish to say for plaintiffs' counsel that, of course, we have no way of knowing how some of these men would testify, so we reserve the right to attack the credibility of such testimony in argument or otherwise by producing rebuttal if we care to read any from the testimony which they may have given before. We have made this stipulation at the request of the court and on the assurance of the de-

6790 fendants' counsel that they have conferred with substantially all of these witnesses and that they expected each of these witnesses to come here and testify substantially to that effect.

Mr. Beach:

We don't mean to be understood that this stipulation is literally and exactly true of any particular witness, but that it represents, to the best of our knowledge and belief, the general effect of the testimony of the group.

The Court:

I suppose either party may call any one of these witnesses if anything develops where you think you need them.

6791 Mr. Mulholland:

We have asked counsel for plaintiffs to call our attention to those persons whom they do not think come within this stipulation, and we expect to put such witnesses as are available upon the witness stand.

Mr. Merritt:

I understand that in the course of the trial if anything unforeseen should develop that we may have any one of these people removed from the stipulation.

The Court:

The court will be pretty liberal with both sides as to that.

6792 Mr. Beach:

We don't expect to try to take anybody out of the stipulation, but if we find that the other side wish to get anybody out of it and they want to call such witness for the purpose of making such explanation as he can in regard to certain testimony, they can do so.

Witness,

6793

CHARLES J. FLYNN,

sworn by Mr. Carroll.

EXAMINED

By Mr. Mulholland:

Q. What is your full name? A. Charles J. Flynn.

Q. Where do you live, Mr. Flynn? A. South Norwalk, Conn.

6794 Q. Speak up so that the last man over here can hear you. You are a defendant in this case? A. Yes, sir.

Q. What is your age? A. Thirty-eight.

Q. You are not married? A. Not yet.

Q. Of what local of the United Hatters are you a member? A. Hat Finishers of South Norwalk; what is the number?

Q. Local No. 16? A. 16, I think.

Q. How long have you been engaged in hatting? A. Well, probably sixteen or seventeen years, until two years ago.

6795 Q. How many years ago? A. Until about two years ago, when I give it up.

Q. You are not hatting now? A. Not hatting now; little over two years.

Q. What business are you engaged in now? A. Manufacturer of trucks; motor trucks.

Q. Automobile trucks? A. Automobile trucks, yes.

Q. Can you tell the jury how long you have been a member of the union, approximately? A. Probably fourteen years; fifteen years along there.

6796 Q. Where were you working at the time you were served with summons in this case? A. The Volt Hat Co.

Q. In what city? A. South Norwalk.

Q. At that time or up to that time did you know Mr. Loewe? A. I didn't.

Q. Had you ever heard of him? A. Never.

Q. Did you know where his factory was located? A. No, I didn't.

Q. Never had heard of the man at all? A. Never.

Q. Well, where you worked during the few years prior to the time that this suit was commenced against you, did

6797 you ever see what is called the Journal of the United Hatters? A. Yes, I had seen them in the factory.

Q. Did you ever read one? A. No, I don't believe I ever did.

Q. And did you ever read any of the reports of the conventions of the United Hatters of North America? A. No, no reports. I might have looked at the Journal to find out if people lived in different districts, when an argument would come up.

Q. Did you ever attend any convention of the United Hatters as delegate from your local? A. None.

6798 Q. Or any convention of the American Federation of Labor? A. No.

Q. Were you familiar with a publication known as the Federationist prior to the commencement of this suit? A. I was not.

Q. Do you know who published it? A. I don't.

Q. Did you know of any trouble prior to the commencement of this suit in the factory of Berg & Co.? A. I did not.

Q. Or Roelofs & Co.? A. No, sir.

6799 Q. Did you prior to the commencement of this suit know where either of those factories were located? A. Why, I think I knew of the Philadelphia shop; that is all; but I knew nothing of Berg.

Q. Do you know now where Berg is located? A. I think it is in Jersey somewheres—Orange.

Q. Now, prior to the time that you were served with summons in this case, had you ever heard or read that the officers and agents of your organization were conducting boycotts in states other than Connecticut? A. No, sir.

6800 Q. You will have to speak because the stenographer can't get your nod. Did you ever read or hear that the officers and agents of your organization were following the goods of manufacturers into other states and trying to prevent their sale by the use of the boycott? A. I didn't.

Q. Mr. Flynn, you were left out of this stipulation because of some meeting which you attended. I wish you would state to the jury how frequently prior to the commencement of this suit you attended the meetings of your local? A. Not very often. I was a poor attendant.

Q. You were in office a little while? A. A little while.

Q. What office? A. Vice President. **6801**

Q. How long were you Vice President? A. I don't think it had been three or four years ago; five or something like that.

Q. Were you appointed to fill a vacancy? A. No.

Q. Explain how your term happened to be so short? A. Why, I resigned to take the foremanship of the Volk Hat Co.

Q. During the time that you were Vice President how many meetings did you attend? A. Not any, I don't think.

Q. How many meetings had you attended say from 1898 'till the time this suit was commenced? A. Why, I don't **6802** suppose it would average three meetings a year, or four.

Q. Well, did you ever attend meetings for a few minutes? A. I would go as far as the door to get my name in.

Q. Explain to the jury what you mean by that and why you did it? A. Why, the gentleman that took the list of names had a seat near the door and he would mark my name down in a book we generally were amongst those to go up to the door and just get their name down and come out after that; excuses you from the meeting.

Q. Why did you want to be excused from the meeting; that is what I want the jury to understand? A. Well, you **6803** have something else to attend to; might be a hop to go to; might be an engagement you might want to keep.

Q. What I mean is would you be fined for not attending meetings? A. Oh, I would be fined for not attending the meetings; I would have to get the name on there or I would have a fine.

Q. You had the option of paying a fine or of going to the meeting? A. Yes, sir.

Q. How much was that fine, do you know? A. Twenty-five cents, I think.

Q. Prior to the time you were served with summons in **6804** this case, did you ever knowingly participate in any combination of individuals to destroy Mr. Loewe's interstate commerce? A. Did I?

Q. Yes? A. Never.

Q. Or to boycott his goods in other states than Connecticut? A. Never; never heard at all of the gentleman.

Q. You never heard at all of him before this case commenced? A. I never heard at all of him 'till I saw him here —or was served with the paper.

6805 Mr. Mulholland:

That is all.

CROSS EXAMINATION

By Mr. Merritt:

Q. How many meetings a year were ordinarily held by your local union back in 1900 and 1902? A. Well, usually one every month. Sometimes they would skip a month.

Q. And you think you may have attended about three a year? A. I don't think it would average over that.

Q. And you don't recall staying through any meeting? A. No.

6806 Q. Never recall staying through any meeting? A. No, I don't think I did. No, I can't recall staying through a meeting. I might—

Q. You understood that the object of fining men was to secure the attendance of men at the meetings to transact business didn't you? A. Yes, sir.

Q. And you thought it was right for you to just go to the door and hand your name in and just go right out again? A. Go right out again.

Q. And you always did that? A. Usually.

6807 Q. And you showed no interest in the affairs of your organization? A. Very little; no.

Q. Never talked about them with other members of the organization? A. Might ask the next day what happened, or something like that.

Q. You have occasionally, you think, discussed with the members the following day as to what was transacted at the meeting? A. Sometimes.

Q. You never read the Journal, you stated? A. No, I didn't.

Q. Never looked into it? A. Why, I looked into it to get the number of journeymen, or something like that. But to

6808 read it, I never did.

Q. Where did you see it? A. The Journal?

Q. Yes? A. In the factory.

Q. In the factory where you were working? A. In the factory where I was working.

Q. In the room where you worked? A. The finishing department.

Q. And did you know how they were brought there? A. Why, sometimes they were brought in and laid down on the first bench the boy would come to.

Q. Who brought them there? A. Whoever happened to be going down the street, if they met whoever had them in charge; sometimes we got them during the noon hour. 6809

Q. You knew they were the Journals of your organization, didn't you? A. Yes.

Q. You knew they were put there for the purpose of informing the members as to what was going on and you never had interest, and you never had interest enough—Answer so the stenographer can hear you? A. Yes, sir.

Q. You never had interest enough to open up the paper and read as to what your officers were doing with your money? A. I never read it, sir. 6810

Q. Well, you don't mean that; you have looked in it, you said; you have read some things in it? A. I looked over, as I stated before, for the number of journeymen.

Q. You have read that part? A. Just to find out the number employed in certain districts, that is all.

Q. And did you find that in the officers' report? A. No; that is I don't think so. I can't recall now.

Q. Were you a personal friend of any of the officers at that time? A. No.

Q. Now can you explain to this jury how it is that a man who slipped in to the door and put down his name, and ran out, never showed any interest in the organization, and not taking part in the meetings, and never looked into the Journal, should have been elected an officer of the organization? A. Probably the office didn't amount to very much as Vice President; I certainly didn't take much interest in it because I gave it up after two or three weeks. I never had but very, very little interest in the office of Vice President. 6811

Q. Haven't you any idea how you came to be elected to that office? A. No; unless some of the boys asked me to run, and I simply ran, that was all, and was elected.

Q. Some of the boys did ask you to run? A. Well, I guess so. 6812

Q. Well, don't you know? A. Why I imagine that is what it would be.

Q. Do you remember whether that was so? A. I didn't look for it.

Q. Did you attend the meeting where you were elected? A. If I am not mistaken I was in just before the election of officers. I think, if I remember rightly I was at the meeting just about the time—just before the election come up.

6813 Q. And at that time you had just come in and dropped your card in, or had your name recorded and would go out? A. My name was on when I went in.

Q. You didn't go right again; you stayed awhile? A. I stayed talking to the boys—some of the men; I guess that is how I come to run; they asked me to run.

Q. You stayed awhile while the business was being transacted? A. Well, that part of it.

Q. What? A. The election of officers.

Q. Oh, you stayed through the election of officers? A. Yes, sir.

6814 Q. You have always known how to read haven't you; I mean during all this period? A. To read?

Q. Yes? A. Yes.

Q. There is nothing the matter with your faculties in any way, is there? A. I don't think so.

Q. You read any newspapers? A. Read the daily paper.

Q. Did you read the local papers? A. The Norwalk papers?

Q. Yes? A. Yes, sir.

Q. A regular reader? A. Yes, a regular reader.

6815 Q. Of which one? A. Which paper?

Q. Yes? A. Why, the Norwalk Hour, I guess, mostly.

Q. Principally the Norwalk Hour? A. Now, yes.

Q. And you were a reader of it in 1902? A. Why, yes. Not probably so much then, but I am pretty sure that has been the paper brought to the house for a number of years; the Hour.

Q. That would cover from 1900 to the time of this suit, 1903, that was the paper you were reading then? A. Yes, I guess it was.

6816 Q. Now, are you sure that you never read anything in the paper showing that your organization was engaged in boycotting? A. I never did.

Q. How long have you worked in the Volk Hat Factory? A. In the what?

Q. In the Volk Hat Factory? A. I guess about a year and a half; I am not sure.

Q. Don't you remember back in 1900 where they tried to prevent the Volk Hat Co. doing business with Berg & Co.? A. No, I don't.

Q. Don't remember that at all? A. No, I don't know as I was—I didn't know about that; probably I wasn't there at that time. 6817

Q. Well, let's see. Were you there in 1900, in the town, I mean? A. In 1900?

Q. Yes? A. Well, I can't recall. I am not positive on that point. I was away for a while.

Q. Well, when were you away? A. If I am not mistaken, I was away around 1889, and 1900, along in there sometime.

Q. 1889 and 1900? A. I think so.

Q. Well, how long were you away? A. Oh, six or seven months the first trip. 6818

Q. Where did you go? A. Springfield, Mass.

Q. Worked there for a while? A. Yes, sir.

Q. And you think that was in 1889 or 1900? A. I am not positive.

Q. Well, isn't your memory clear as to things that happened— A. Not clear on that point, no.

Q. It is clear however on the point that you never heard of any such thing as boycotting? A. I never knew of my organization—our organization, doing any boycotting.

Q. Did you know other unions had engaged in boycotting? A. No, I didn't. 6819

Q. Never heard of such a thing? A. No.

Q. Never read about such things? A. I have read about this case.

Q. I mean prior to the time this suit was started? A. No, I didn't.

Q. You never heard that organized labor anywhere had been accused of being engaged in boycotting? A. Oh, I might have read something in the papers about it.

Q. That is what I want to know; you are not sure whether you did or not? A. No, I am not. 6820

Q. Well, how are you sure that you never read anything in the papers as to whether or not your organization had engaged in boycotting? A. Well, it is probably because it was the organization I belonged to; I don't know; it might be I might pick up something like that.

Q. You might what? A. I might pick up something like that quicker than I would another one.

6821 Q. Well, the affairs of your organization evidently didn't make much impression on you did they? A. Not very much.

Q. And are you willing to swear that you never heard or read that your organization was engaged in boycotting, or you may have heard or read but don't remember now? A. I never heard of our organization doing boycotting.

Q. Or never read it? A. Or never read it.

Q. You are willing to swear to that positively? A. I am.

Q. Do we understand each other as to the word boycott;
6822 that is to prevent the sale of goods of any manufacturer? A. That is the way I understand it.

Q. But you don't remember that you ever heard of any other organization that was engaged in it? A. No, I can't say positively that I do remember; I can't say positively.

Q. Your mind is perfectly clear on the other question? A. Pretty—yes, on the other.

Q. Well now you say you read the Norwalk Hour. I will read you a few extracts from the Norwalk Hour, the first one taken from the first page with big head lines; a whole column given to it: "Sidelight on the recent Volk & Co. strike.
6823 How the Hatters won. Concerns closing up shop." The January number of the United Hatters of North America has this contribution from M. J. Golden. Do you know Mr. Golden? A. M. J. Golden?

Q. Yes? A. Yes.

Q. "Secretary of the Hat Makers' Association. A very important discovery was made by the National Executive Board in relation to Volk & Co. doing business with Berg & Co. It seems that Volk & Co. was selling the Berg soft hats in connection with their own production and leading their cus-
6824 tomers to believe that the label was used only for stiff hats. After the matter was discovered two of our national officers, Mr. Lawlor and Mr. Maher, came to South Norwalk and laid the case before the local Executive Board. They stated that the Volk Co. was doing business with Berg & Co., and by so doing was helping one of the greatest enemies of fair labor to win a victory from the United Hatters of North America. A majority of the local executive board decided to leave it in the hands of the National Executive Board. We having full confidence in the statements made by the National Committee, and knowing a vigorous measure was necessary at the time, the

only thing that could be done was to take the label from the Volk factory; and if that action was not sufficient to bring terms of peace, then the last means would have been resorted to; that is to say the help would have been called out, but to evade the situation the Volk Co. shut down their factory. They claimed that they would not do business without the label. They promised to sever their business relations with Berg & Co. as soon as possible." Then he goes on to tell about Mr. Sculley. Do you know Mr. Sculley? A. Yes, sir. **6825**

Q. "We are all glad that we have no manufacturer in the District of South Norwalk helping Berg & Co. If we have and we find it out we will attend to their case." Now you never read that? A. I never did read that. **6826**

Q. Never heard of it before? A. I never read that.

Mr. Davenport:

What is the date of it?

Mr. Merritt:

It is the date of January, 1900.

Q. Now let me read from August 18th, 1900, in the Norwalk Hour, the paper you read: "Wore non-union hats. An oversight made it necessary for two hatters to pay fines. There are two Danbury union hatters who will in the future be very careful to wear only union made head gear. Wednesday morning a well known hatter was held up by several of his fellow workmen as he entered the shop, and his hat was taken off his head and examined with the result that it was discovered to be non-union made. A fine of $2.00 was assessed against him and he was compelled to pay it before the men would allow him to go to work. Afterwards he started to get satisfaction and instituted a search for non union hats, but failed to find one in the whole factory. On the day previous one had been found in the same shop worn by one of the workmen, who was also fined $2.00, which fine he paid before he was allowed to go to work." How about that? A. I never read it. **6827** **6828**

Q. Never heard of such a thing? A. Never did.

Q. Norwalk Hour for August 9th, 1901: "James P. Maher, President of the Danbury Hat Makers' Association has returned from Philadelphia, where he has been for several days attending a meeting of the General Executive Board of the United Hatters of North America. The principal business that came before the meeting was the question of unionizing the Roelofs factory in Philadelphia. Mr. Maher stated

6829 that the factory would undoubtedly be unionized in a short time." Remember that? A. No, I don't.

Q. Well, I will read from the Norwalk Hour for July 18th, 1902: "After Loewe factory. Hatters' Union will attempt to unionize the Danbury plant. The United Hatters of North America which has recently unionized several of the largest hat factories in the country has transferred its operation to Danbury, and announces its intention of unionizing the factory of D. E. Loewe & Co. President Moffitt, Vice-President Lawlor and Treasurer Maher went to the factory and ordered all union men employed there to quit work." Did
6830 you read that? A. I can't recall it.

Q. You can't recall it now? A. I can't recall reading that.

Q. You wouldn't want to swear that you didn't read it? A. Yes, I would swear that I didn't read that.

Q. This is the paper you were reading at that time? A. Why, I guess it was. It was usually the paper that came to me.

Q. Was it the paper you were reading in 1902? A. Why it is usually the paper that was brought to me, the Norwalk Hour.

Q. Well, it was the paper you were reading in 1902,
6831 wasn't it? A. Yes.

Q. Here is another one, July 29th, 1902: "The Loewe Matter. Situation between Danbury firm and union unchanged. The situation at the factory of D. E. Loewe & Co. in Danbury which the National Hatters' union propose to unionize, is unchanged, says the News. A few men are working in one or two of the departments. Mr. Loewe said that he intends to keep the factory in operation, and has no intention of having it made a union one. A hall in White Street has been put into use as a headquarters of the Hatters who have
6832 been called out of the factory." How about that? A. I can't recall it.

Q. Well, you mean? A. I can't recall reading it.

Q. You wouldn't be willing to swear you didn't read it, would you? A. Pretty sure I didn't read it.

Q. And there are a number of references in here to the Convention proceedings of the United Hatters; did you ever read those? A. No.

Q. Well now can you explain how you, as a reader of that paper should in all of these instances have missed the very matters which related to an organization in which you

had a financial interest? A. Well, there are any number of 6833
times that the paper come into the house and I never read it. Never.

Q. Now during all this time you were a member of a union factory, weren't you, working with other union men? A. Yes, sir.

Q. And for a month at least you were an officer? A. Yes.

Q. Now during that time, didn't you have any talk with any of your members or fellow officers concerning the affairs of the organization? A. Why, yes, we would have some, 6834
but I was only three or four weeks; they only met once a month.

Q. You met in the shop every day? A. No, not the officers.

Q. No, but the men, the other members of the organization? A. Members of the organization?

Q. Yes, who elected you to office? A. Yes.

Q. Didn't you hear any of those people discuss the Loewe matter which at that time was paramount? A. I never heard at all of the Loewe matter until I was served with the paper; I don't think honestly.

Q. Don't you believe that is a failing of memory on 6835
your part? A. I don't know. I am positive I never heard tell of it; I am pretty sure I never heard tell of it until the day I was served with papers.

Q. Isn't it true that you may have read this and forgotten it; these things didn't make very much impression on you anyway did they? A. Why no they didn't; I didn't pay much attention to them.

Q. How can it be if they never made very much impression on you that you can testify so positively that they never came to your attention? A. Well, I never took any
interest in it; I didn't take but very little interest in it; very 6836
little.

Q. Well, you would be willing to admit, wouldn't you, that there are other matters which came to your attention in 1902 in which you didn't take very much interest, which have completely passed out of your mind? A. There might be some.

Q. But it isn't possible that this could have passed out of your mind, according to your testimony? A. Why, if I haven't read it all.

6837 Q. Well, now, did you hear about the anthracite coal strike in 1902? A. Why, yes; I heard of the coal strike.

Q. Read it in the paper? A. Read one or two items about it.

Q. And you may have read that organized labor was engaged in boycotting, but you don't recall now? A. Oh, I recall about the coal strike. If I am not mistaken I recall, because President Roosevelt was asked to intercede, or something like that.

Q. You do remember that? A. I remember that.

Q. Now after you were sued in this case you continued
6838 a member? A. Yes, sir.

Q. Continued paying dues? A. Yes, sir.

Q. Made no protest? A. None.

Q. And made no effort to prevent the re-election of the same officers? A. None.

Q. Now, don't you remember attending a meeting when Mr. Sculley made a report? A. I don't.

Q. According to the minutes of your own local organization, kept at the day and time of it, your name is down as having attended a meeting at which Mr. Sculley reported on the doings of the Convention of 1900 of the United Hatters?
6839 A. That may be true, my name may be down there.

Q. But you are sure you never heard any such report? A. I never heard Mr. Sculley make a report of anything.

Q. Did you ever vote for delegates to any convention? A. No, I don't think I did.

Q. Are you sure about that? A. I am pretty sure I didn't vote for any delegates to a convention. I am positive.

Q. You are positive? A. I am pretty sure I never did.

Q. Did you vote for the Convention of United Hatters and Convention of the American Federation of Labor both? A. I never voted for a delegate to a convention of any kind.
6840 Q. Did you ever attend any meeting of the Central Labor Union of Norwalk? A. One—two.

Q. You were a delegate then? A. No. I was a committee there; it was on a picnic; I think it was a picnic.

Q. When was this? A. It is a number of years ago. It was their picnic they were getting up or something and I was on the Committee.

Q. Well, you knew your organization was a part of the Central Labor Union of Norwalk, didn't you? A. I did.

Q. And you knew it was supported by the Central La- **6841**
bor Union of Norwalk in part? A. Yes.

Q. And didn't you know that the Central Labor Union of Norwalk had been engaged in boycotting? A. I didn't.

Q. Never heard of such a thing? A. Never heard of such a thing.

Q. You never heard that they were engaged in an attempt to prevent the patronage going to any dealer? A. I never heard at all of the central labor union of Norwalk boycotting; never have heard of it.

Q. Or in any way exercising its influence? A. Never.

Q. Didn't you know the Central Labor Union of Nor- **6842**
walk had a constitution providing for boycotting? A. I didn't.

Q. Didn't you know that your organization had been engaged for a great many years in trying to compel manufacturers to unionize? A. To compel them?

Q. Yes? A. No, I didn't.

Q. Did you know that they had been engaged in endeavoring to make them unionize? A. I know we had agents out.

Q. And in your mind those agents were sent out for **6843**
the purpose of bringing about the unionization of factories? A. Why they were supposed, as I thought at that time, to advertise our label and look after our interests.

Q. I ask you if you knew that your organization was engaged in endeavoring to bring about the unionization of factories, and you said you knew you had agents out? A. Agents; you refer to agents?

Q. I am asking you if you knew that your organization was engaged in a general combination to induce manufacturers to unionize their factories? A. Why, to induce them; yes, probably they were.

Q. You did know that? A. Yes. **6844**

Q. And you knew there were agents out on the road for that purpose? A. Advertising our label.

Q. For that purpose? A. For the label; advertising the label; inducing people to use the union made goods as I understand.

Q. You knew nothing about the unionizing of different factories? A. No, they didn't visit the factories as I understand it—these agents didn't visit the factory.

Q. You knew that it was a special duty of your officers,

6845 did you not, to use all means in their power to unionize different factories? A. Why, yes; I supposed they would use all legitimate means to.

Q. What was your idea of the means a labor union would use to unionize factories? A. Ask the men to use the label; pay the fair bill.

Q. And suppose he refused? A. Well, if he refused, why, I don't really know what the next move would be.

Q. You knew nothing about the means that they would use as to what the next move would be? A. No more than to try and induce him.

6846 Q. Yes, but what means would be employed to induce him if he refused? A. Oh, I don't know. I have never—

Q. Now, Mr. Flynn, you don't mean to testify that you didn't understand that labor unions were engaged primarily in the work of compelling manufacturers to yield to their demands by strikes or boycotts? A. I never knew they were by an agent or an officer that compelled a manufacturer; no, sir; I didn't.

Q. Didn't you know that was one of the principal activities of organized labor? A. I am a member, I don't believe in it, sir.

6847 Q. How about strikes; you knew they were engaged in declaring strikes where the manufacturers wouldn't grant their demands, didn't you? A. I don't believe in it at all.

Q. I am not asking you for your personal opinion; if you don't believe in them I don't see why you went on and allowed the same officers to be re-elected; can you explain that? A. I went on to earn my livelihood, I suppose, my business.

Q. Yes, but couldn't you bring about any change in the affairs of your organization? A. I didn't know they compelled strikes.

6848 Q. Now you said you didn't believe in these matters, but you knew that your organization was being accused of these things, didn't you? A. What is that?

Q. You knew that your organization was being accused of doing these things? A. I didn't know until afterwards.

Q. Yes, you knew when you were sued in this case? A. Yes, after this suit come on.

Q. If you didn't believe in it why didn't you do something to bring about a cessation?

Mr. Beach:

I object to that under the opinion of the Circuit Court of Appeals here. 6849

Q. Will you state how you explain your conduct in remaining passive and silent in the face of these charges against your organization, if you didn't believe in such matters? A. How I remained silent?

Q. Yes? A. Supposing it was in the hands of people that thoroughly understood it and knew more about it than I did; for that reason I went along.

Q. You are perfectly willing to leave it in their hands? A. I am perfectly willing to leave it in their hands.

Q. And stand by what they do? A. Yes. 6850

Q. You signed a letter authorizing the employment of counsel? A. Did I what?

Q. Did you sign a letter authorizing the employment of counsel for your defense? A. Not that I know of. Not that I can recall. No, I don't remember signing any letter. I don't think I signed any.

Q. If you did don't you think you would recall it? A. Yes. I haven't signed any letter.

Q. Didn't you sign a circular from Mr. Connolley concerning the employment of counsel; signed it and sent it back to him? A. Connolley; did I receive a letter after this suit was brought? 6851

Q. Yes? A. I think I did. Now it is brought to my mind I think I received a letter from Mr. Connolley.

Q. You signed an attached letter and mailed it back to him in a stamped envelop authorizing the employment of counsel in your name? A. I remember receiving a letter from Mr. Connolley, and I guess if it was a letter in a stamped envelope that I returned it to Mr. Connolley.

Q. You don't remember anything about that, signing a letter; let's see how good your memory is? A. I was just trying to recall that now, that attached letter; that is what I was trying to recall. I remember receiving that from Mr. Connolley, yes. I am pretty sure now that I sent that back to Mr. Connolley. 6852

Q. Now, you try as hard to remember some of those other matters, and see if you don't recall that you did hear of Berg or Roelofs in an effort to prevent the sale of their goods? A. No, I didn't.

Witness excused.

Witness,

6853

STEPHEN H. CARLIN,

Sworn by Mr. Carroll.

EXAMINED

By Mr. Mulholland:

Q. What is your full name? A. Stephen H. Carlin.

Q. Where do you live, Mr. Carlin? A. South Norwalk.

Q. How long have you lived in South Norwalk? A. All my life.

6854 Q. And what is your age? A. Forty-seven.

Q. You are a defendant in this case, I believe? A. Yes, sir.

Q. How long have you been working at the hatters' trade? A. I'd say about twenty-three or twenty-four years.

Q. And when did you first become affiliated with the union and what branch of the trade? A. When did I first become?

Q. Yes, sir; a union man? A. When I was about seventeen years of age, I guess.

Q. When you were about seventeen? A. Sixteen, yes.

6855 Q. And did you join the Makers or Finishers? A. Finishers.

Q. Since that time have you been in continuous good standing in the finishers? A. Yes, sir.

Q. And up until the time that you were sued in this case? A. Yes, sir.

Q. Have you ever represented your local as a delegate to any convention? A. No, sir.

Q. And have you ever held any office in your local union? A. Treasurer, yes, sir.

6856 Q. I wish you would tell the jury between what periods of time you were acting as Treasurer of the Norwalk Finishers? A. 1898 'till about two or three years ago, I should think.

Q. From 1898 up 'till— A. About twelve years, I should say.

Q. And as such Treasurer what were your duties? A. Well, the duties consisted of paying bills, and that is all I had to do; the organization I turned out money for the Board of Trustees on their ruling.

Q. From whom did you receive the money with which to pay bills? A. From the Secretary. **6857**

Q. And on whose authorization did you make payment of bills? A. Board of Trustees.

Q. Have you ever attended a convention of the United Hatters as a guest, if you were not there as a delegate? A. No, sir.

Q. Have you ever been as a delegate to any convention of the American Federation of Labor? A. Not any.

Q. Prior to the commencement of this suit did you ever read a journal known as the Federationist? A. Never did.

Q. Did you ever see a copy of it— A. Never did. **6858**

Q. In the shop where you were employed, prior to the commencement of this suit, state whether or not you from time to time saw copies of the United Hatters Journal? A. Yes, sir.

Q. And where did you see them? A. On the benches, lying around the shop; most any place in the shop.

Q. And what is the fact as to whether you saw copies of the reports of conventions? A. I never took any interest in the reports; just read about where other people would be in the different districts.

Q. That is from the Journal? A. That is from the Journal. **6859**

Q. To what extent did you read this Hatters' Journal prior to the time suit was commenced against you? A. That is the only extent I did read it, to see where people worked in different districts.

Q. Prior to the time you were served in this case, did you know Mr. Loewe? A. No, sir.

Q. Did you know that such a man lived or existed? A. I didn't.

Q. Did you know that your organization, the United Hatters, published from time to time in this journal an unfair list? A. Yes, sir. **6860**

Q. What did you understand was the nature of that unfair list? A. Why, people that ran unfair shops, as far as I can say.

Q. And what did you understand the duties of the members of your organization should be toward those men? A. What do you mean?

Q. As to whether they should deal with them or not? A. That is just not deal with them that is all.

6861 Q. It was a sort of "We don't patronize list"? A. It was a sort of a "We don't patronize list." That is all.

Q. Did you hear of the Berg trouble at the time it was on? A. Yes, sir; I heard of it.

Q. And do you know what the attitude of the officers of your organization was? A. No, I couldn't say; I don't remember.

Q. And the Roelofs trouble, did you hear of that? A. I heard of that; yes, sir.

Q. Can you tell the jury where you got your information about those two matters? A. From the papers; reports
6862 there at meetings.

Q. Now, during the time you were Treasurer, with what degree of regularity did you attend the meetings of your local? A. Once every month.

Q. You were a constant regular attendant? A. Yes, sir.

Q. During the twelve years, did you say? A. Yes, sir.

Q. During that time did you miss any meeting? A. Oh, yes, I think I have.

Q. Can you tell the jury about how many? A. When I am sick is the only time; when I would be sick I would be
6863 out; I couldn't give any number.

Q. But when you were able to attend you attended the meetings? A. Yes, sir.

Q. And you heard any discussions that took place on the floor at that time? A. Yes, sir.

Q. I think that is all. Oh, one other question. Did you ever know prior to the time this suit was commenced that the officers and agents of your organization were following the goods of manufacturers into other states and there conducting what are called boycotting operations? A. I never did.

6864 Q. Did you ever hear of Triest & Co. before this case was commenced? A. No, sir.

Q. Or Stokes & Co.? A. No, sir.

Q. Now, to get a little more information in connection with this boycott business, I wish you would tell the jury frankly anything that you knew about any boycotting on the part of your officers— A. You mean agents?

Q. Yes? A. The agents were just advertising the union label. I never knew of any boycotting.

Q. In these meetings you attended while you were treasurer you never heard any discussion of that matter that

have you any information in reference to it? A. I might have heard of it, but I don't remember; possibly might hear of it. 6865

Q. Do you mean that you heard that your agents were boycotting. A. No, sir; not that; but advertising the label.

Q. Yes, have you been present at any meeting where there have been any visitors who have discussed the question of boycotting operations conducted by your officers or agents? A. No, sir.

Q. Now let me understand, prior to the commencement of this suit, did you receive any information to the effect that the officers and agents of your association were following the goods of Berg & Roelofs or Loewe, into other states, and there visiting their trade and trying to persuade or coerce or intimidate them into refusing to buy the goods? A. Never heard of it. 6866

Q. Then is your knowledge of the alleged boycotting limited to the unfair list published in the Journal? A. That is all.

Mr. Mulholland:

That is all.

CROSS EXAMINATION 6867

By Mr. Merritt:

Q. What were the sources of your information, Mr. Carlin, concerning your agents and their operations? A. Sources?

Q. Yes? A. You mean boycotting?

Q. No, you say you knew your agents were on the road advertising the label? A. Why, reports in the meetings so far as I can see.

Q. Reports? A. Of agents.

Q. The agents reported at the meetings? A. No, the agents reports from other sources; written reports or letters, I should imagine come through the mail; it wouldn't come through my hands. 6868

Q. But do I understand that this was knowledge as to what the agents were doing which came through reports read by the secretary at the meetings of your local? A. Yes, sir.

Q. And that, to the best of your recollection is the sole means of your information? A. It is; the agents were just advertising the label; I never knew of any other differences.

Q. Yes, but I am trying to discover whether this infor-

6869 mation that you had as to your agents came entirely from these reports made at your local meetings? A. Yes, sir.

Q. And that is all you have learned about them? A. That is all.

Q. That is the only way you ever learned about them? A. That is the only way I ever learned about them.

Q. Didn't you read any of the reports of the agents in the Journal? A. I knew the reports was in the Journal, but I never read them; they never appealed to me. I thought they got paid for advertising the label. I never read a report.

6870 Q. I thought you read the Journal? A. Just as I have stated here.

Q. You read it as I understood? A. Just to find out what other jours were doing in the different districts where they were located. I never read the agents' reports.

Q. You never looked in the Journal at matters which concerned anything else? A. I didn't taken any interest in the other parts.

Q. Didn't you take any interest in the reports of your officers as they appeared in the Journal? A. Reports of the officers?

Q. Yes? A. Why, I didn't take much interest, no.

6871 Q. Never read them? A. Never read them; not in the Journal.

Q. That is what I am talking about now? A. Never did.

Q. And your memory is perfectly clear now as to just what you read in the Journal, and you are perfectly willing to swear that you never read anything else in the Journal? A. Yes, sir.

Q. And your entire knowledge or information as to what your agents were doing was from reports made at the meetings of your local? A. It wasn't the report; just reading a

6872 letter—communication.

Q. Who wrote these communications? A. I should imagine from headquarters.

Q. That is from the national officers? A. Yes, sir.

Q. And as I understand it, the National Secretary or President would write a letter to the local and those letters would be read at the local meeting? A. Yes, sir.

Q. And those letters would tell of the work the agents were doing? A. Just tell about the different people—jours

in different districts; wouldn't tell about what they were doing; no, sir. **6873**

Q. As I understand it you went to local meetings and you heard reports? A. Yes, sir.

Q. As to what your agents were doing; is that true? A. Yes, sir.

Q. Those reports told what the agents were doing? A. Not altogether told what they were doing.

Q. Well, they referred to that matter? A. Yes, sir; told the localities they were in; the territory they covered, and one thing and another.

Q. And that report showed that they were traveling all around the country, didn't it? A. Yes, sir. **6874**

Q. So you knew they were going through different cities in the United States? A. Yes, sir.

Q. And those letters came from the national officers? A. Yes, sir.

Q. I understand you are a regular attendant at meetings? A. Yes, sir.

Q. This is from the regular meeting held January 10th, 1900, from John Phillips, a letter containing a notice of circular letters that were being sent to retailers and jobbers in hats, appealing to the labor organizations in the country to assist our organization in its fight with the Berg Co.? A. Possibly might have been read there and I was present. I don't remember it. It might have been one of the meetings I skipped. **6875**

Q. But any information which you have of the work of the agents of this kind you gained by attending local meetings? A. Yes, sir.

Q. It wasn't of that character? A. Possibly that might have been read and I don't remember it.

Q. But at all the meetings you ever attended and of all the reports you ever had from the national officers you never heard anything of that character? A. I say it might have been read and I don't remember it. I wouldn't say it hadn't been read. **6876**

Q. But you wouldn't say that you didn't hear it? A. Yes, sir.

Q. I see. I didn't understand you. I can't blame a man for a lapse of memory. Did you ever see one of these circulars (showing witness circular)? A. I never did.

6877 Q. Now look down there further and you will find the name of Edward Barrett as President. I believe Mr. Barrett was a Norwalk man, wasn't he? A. What date was that?

Q. I presume it is 1895 or 1896, about that time? A. I don't remember anything of that description.

Q. Mr. Barrett was a Norwalk man, wasn't he? A. He was President; I heard of him being President, but I don't remember it.

Q. Do you know him personally? A. Not to speak to, but I know him to be President; yes, sir.

6878 Q. He was the first President of the United Hatters of North America? A. I have heard that he was; yes, sir.

Q. Well, you were a member of the United Hatters, weren't you, at that time? A. Well, he was mentioned here officially; I wouldn't pay much attention to it.

Q. But you were a member of the United Hatters? A. Yes, sir.

Q. In 1896, when it was formed? A. Yes, sir.

Q. How long were you Treasurer? A. Twelve years.

Q. Will you give me the date again? A. 1898 to about two or three years ago, I should say; three years ago—two years ago I stopped I think.

6879 Q. Don't you recall that a special assessment was levied in connection with the Berg fight? A. Yes, sir.

Q. That was in about 1900, wasn't it? A. I think so.

Q. And you testified you did know that Berg & Co. had a fight with your organization; you had heard that? A. I had heard it; yes, sir.

Q. And you knew that this assessment was levied to help your organization in winning this fight? A. No, help the assistance the strikers that is all the way I would look at it. To assist the strikers and the people that had struck.

6880 Q. Well, that is to help them win the strike? A. You said the organization.

Q. Oh, I see what your point is. Now, isn't it true that letters came from the National Officers from the Orange Association asking for money to send agents on the road to fight the Berg hats? A. Possibly Orange sent letters, but I never remember them.

Q. You don't remember them? A. No, sir. I wouldn't say they wasn't read, because they might have been read and I forgot them.

Q. That is if the communications were read from the **6881**
agents of the Association giving detailed accounts of the strike in the Berg shop and what had been done there and then a letter from John Phillips containing the circulars that had been sent around the country to help win the fight with Berg, you don't remember anything about that? A. I just say there was a strike in Berg, but I don't remember any of those details; no, sir.

Q. You knew that your organization had been sued by Henry H. Roelofs & Co., didn't you? A. I had heard of it; yes, sir.

Q. Well, you knew in a general way what that suit was **6882**
about, didn't you? A. You mean for damages?

Q. Yes? You knew it was for damages? A. Sure.

Q. For two hundred and fifty thousand dollars damages? A. Yes, sir.

Q. And you knew that Roelofs & Co. claimed that their business had been injured by your organization, didn't you? A. I don't remember of anything of that description.

Q. Didn't you infer from the fact that the firm had brought a suit against the officers of your organization— A. I didn't know what it was for.

Q. That it had grown out of the fight between your **6883**
organization and Roelofs? A. A fight; but I didn't know what it was about.

Q. Never heard that it involved boycotting in any way? A. I heard about boycotting, and the unfair list, that was the extent that I ever heard.

Q. And you knew your organization had carried on an unfair list? A. Yes, sir.

Q. And you knew that Roelofs name was on that unfair list? A. Yes, sir.

Q. Did you know that John B. Stetson's name had been on the unfair list? A. I had heard of it. **6884**

Q. Isn't that printed in the Journal? A. No, I didn't notice it in the Journal; I heard of it.

Q. You knew the object of that list was to prevent the sale of their goods as far as possible, didn't you? A. No, sir; I never looked at it that way.

Q. Did you ever know of any dealers being put on that unfair list? A. Any who?

Q. Dealers? A. No, I don't remember.

6885 Q. Did you ever read any reports of officers; you said you never read them in the Journal? A. Reports; did I ever read any?

Q. Yes? A. No, sir.

Q. You never did? A. No, sir.

Q. You never read anything from the Convention proceedings? A. Never did.

Q. Of the United Hatters? A. No, sir.

Q. Had you ever seen them? A. You mean the Journal?

Q. No, I mean the Convention proceedings (showing
6886 same to witness)? A. Did I ever read them; no, sir.

Q. You never saw these? A. I have seen them, but I have never read them.

Q. Seen them in the factory where you worked? A. Yes, sir; place them around; sometimes, and given them around.

Q. Now, you knew these convention proceedings and this Journal were printed to inform the members as to what was going on, didn't you? A. I should suppose so; yes, sir.

Q. And if any man wanted to know what was going on he could find out by reading these? A. Yes, sir.

6887 Q. And you, an officer of your union, Treasurer, didn't have enough interest to read any of them? A. No, sir.

Q. Weren't you an active man in the trades union world? A. No, sir.

Q. How did you come to be Treasurer, elected by your union? A. Because I was an honest man, I suppose; did you ever hear of one of them?

Q. And are you the only one in your organization? A. I don't know.

Q. That seems to be the only reason that you explain your election? A. A little vaudeville, eh? I don't know why
6888 they elected me. I wouldn't say that. That is a little horse play; but I could have been in for life, I suppose, if I wanted to, but I resigned and went to the factory.

Q. I would like to know when you have been elected to office in your organization how it is that you claim you never took any interest in its affairs? A. There was nothing to do but to pay bills. I had none of these reports to go over, or any discussion whatever, and I was glad I didn't.

Q. Are you a reader of any daily paper? A. The South Norwalk Sentinal.

Q. Did you ever read anything in the Norwalk Sentinal about boycotting being done by your organization? A. Possibly read it. I don't remember now what it was. I wouldn't say that I didn't read it. 6889

Q. There were different articles there about Mr. Loewe soon after the strike took place? A. I possibly read them but I don't remember them.

Q. Well, you can't go behind your recollection? A. That is right; yes, sir.

Recess until two o'clock.

Afternoon Session. Wednesday, October 2nd, 1912. 6890

HUGH C. SHALVOY

Sworn by the Clerk.

EXAMINED

By Mr. Beach:

Q. Where do you live, Mr. Shalvoy? A. Danbury, Conn.

Q. You are one of the defendants in this case? A. Yes, sir.

Q. And are you an officer of any local union there? 6891
A. I am Secretary-Treasurer of the Danbury Hat Finishers Association.

Q. And for how long have you been Secretary and Treasurer of that association? A. I have been Secretary since 1894; Secretary-Treasurer since 1902, I think.

Q. Have you attended any conventions of the United Hatters of North America? A. Yes, sir.

Q. And which one before 1903 including the convention of 1903? A. 1896, 1900 and 1903.

Q. That is all there were down to that date? A. Yes, sir. 6892

Q. And in all of them you were down there as delegate from the Danbury Finishers? A. Yes, sir.

Q. Did you ever attend any convention of the American Federation of Labor? A. 1898 at Kansas City.

Q. As delegate from what? A. The Connecticut Federation of Labor.

Q. From the Connecticut Federation of Labor? A. Yes, sir; that is down to that date you spoke of, I am stopping at the year 1903, or say the end of the year 1903.

6893 Q. You, as Secretary of the Danbury Finishers, would receive copies of the Journal of the United Hatters from time to time? A. I did, yes.

Q. From the time they were published? A. From the time they were published.

Q. I have forgotten whether you testified to this, but I want to get it on record so I know where it is; about how many of those copies did you receive at each deal? A. In the neighborhood of between 300 and 400; I never counted.

Q. Those were for the Finishers Association? A. Those were for the Finishers Association.

6894 Q. About how many members of your association were there at that time? A. About 1300 I think.

Q. Well, is that approximately correct, that number? A. Yes, I should say it was nearer 1300 than it wac 1200. Somewhere between 1200 and 1300.

Q. Is that correct to say for the year 1900 to 1903, inclusive? A. Yes, sir.

Q. What did you do with those copies of the Journal when you got them? A. They used to come in packages, possibly 100 in a package; the express man used to bring them up and leave them in one of the rooms in the office.

6895 Q. In what office? A. The Hatters office.

Q. In the office of the— A. Hat Finishers Association.

Q. The Hat Finishers Association in Danbury? A. Yes, sir; and when the stewards would come to the office to make their returns, I used to tell them that the Journals had arrived, and if they wanted to bring any to the factory, they could help themselves.

Q. Now, speaking generally of the practice of those stewards, what was their practice as you observed it? A. Some would go and take a bundle of 20 or 30, depending on the size of the factory and the number of men employed in the

6896 factory where they were, they generally used about 1-3 of the number of Journals, one-third of the Journals for the number of men employed in the factory.

Q. The number of finishers? A. Yes, the number of Finishers. Some of those stewards would not take any, they claimed they didn't want to be bothered with them. If the members wanted to read them, let them come to the office and get them themselves.

Q. Was that the fact or not during the years 1900 to 1903 inclusive, that some of the stewards took the journals to their factories, and some of them did not? A. Yes. 6897

Q. Were you a reader of the Journal? A. Yes, sir.

Q. At those conventions of 1896, 1900 and 1903, do you remember whether you were on any committees or not? There is no use waisting any time upon it, whatever the record shows in the record? A. Yes, the record will show sure. The only committee I remember of being on was the auditing committee of the President, I think it was the 1900 convention.

Q. You were present throughout at those conventions? A. Yes, sir 6898

Q. As a delegate? A. As a delegate. There might have been sessions I was not present at.

Q. But barring some accidental omission, you were there substantially throughout the entire proceedings? A. Yes, sir.

Q. You heard the reports which President Moffitt made at those several conventions? A. Yes, sir.

Q. This convention of the American Federation of Labor that you went to was in 1898? A. Yes, sir.

Q. At Kansas City? A. At Kansas City.

Q. Do you remember whether you were on any committee there? A. I was not. 6899

Q. Now how about these printed reports of the conventions, were those also sent to you as secretary? A. Yes, they came to me, similar to the Journal and they were distributed about in the same way, too.

Q. Whether or not the same thing is true of the printed reports of the conventions that they testified to about the journals, to the practice of the steward, some taking and some not? A. Yes, sir.

Q. You say are a reader of the Journal of the United Hatters? A. As a rule, yes, I read it pretty thoroughly. 6900

Q. And you read in those journals the reports of the agents and officers? A. Yes, sir.

Q. Now prior to the case of the strike in Loewe's factory, did you or not know that any officers of your union, had been in conference with Mr. Loewe in regard to unionizing the shop? A. Yes, I did.

Q. How did you first hear about this strike? I am calling your attention to the bare fact of the men

6901 coming out; when was your attention first called to the subject? A. My first attention, or my attention was first called to that by Mr. Barrett. Mr. Barrett at that time was President of the Danbury Hat Finishers Association, and he instructed me to notify the members of our association that were then working in the Loewe factory to come to a meeting that would be held at a certain date, I think it was the following morning, or a day or two after they being notified.

Q. Either the following morning or the day after? A. Yes, sir.

6902 Q. It has been testified here I think, that it was the following morning? A. Possibly.

Q. And that fits in with your general recollection, does it? A. Yes, a day or so, after, I know.

Q. What did you do in pursuance of that direction? A. I saw one of the men, one of the members of the association that I knew was working in the factory, and told him, in fact I sent him a notice that I wanted to see him, and he came. I told him to notify the members of our association of Mr. Barrett's instructions.

6903 Q. That is, to come to the meeting the next day, where? A. At a hall in White Street, I think the number of 68 White.

Q. Somebody had hired that hall, do you know who it was? A. I understand that it was Mr. Maher, I did not know at the time.

Q. Did you attend that meeting? A. Yes, sir.

Q. Who else was there among the officers of the Finishers Association? A. Mr. Barrett was the only one that I have any recollection of.

Q. Who was there of the officers of the Makers Association? A. Mr. Maher.

6904 Q. Mr. Maher at that time was president of the makers and Mr. Barrett president of the Finishers in Danbury? A. Yes, sir.

Q. And the Secretary of the Makers Mr. Connelley, he was secretary at that time? A. Yes, sir. He was not there though at the meeting.

Q. And that hall, what arrangements were there in there for the meeting; were there any chairs there? A. There was a few not very many.

Q. Enough to seat the members that were there? **6905**
A. Oh, no, not nearly.

Q. About how many members were there? A. I should judge there was in the neighborhood of 50 or so.

Q. And they were all union makers and finishers both from Mr. Loewe's factory? A. Yes, sir.

Q. That is, those of them who responded to the call? A. Yes, sir.

Q. Do you know who addressed that meeting, if anybody? A. Mr. Maher, Mr. Maher and Mr. Barrett said a few words, not very much.

Q. Now, of course, I realize the difficulty of your **6906**
attempting at this late date to state what occurred, or to state what Mr. Maher said, but I wish you would give the jury briefly your best recollection as to what was said by Mr. Maher or by Mr. Barrett at that meeting to those union men? A. Of course I cannot remember what either Mr. Barrett or Mr. Maher said, only so far as the general drift of their talk and the meaning of it. But as I remember it, Mr. Maher stated to the meeting that he had several conferences with Mr. Loewe in an effort to unionize, or to bring about the unionizing of the factory, but it was without avail, and Mr. Maher then **6907**
stated that inasmuch as Mr. Loewe would have nothing to do with the organization that he did not think that the members of the organization should work for Mr. Loewe any longer, and he said that there was a number of the fair factories at that time or union factories, that were asking help, and in justice to them why the fair men in the union factory or in Mr. Loewe's factory, should go to the fair factories and support the union factories that were employing our members, with the help they needed. I think that was about the drift of this talk.

Q. That, to the best of your recollection, was the **6908**
substance of what you heard him say? A. Yes, sir.

Q. Well, what did Mr. Barrett say giving the substance of it as you best recollect it, if you cannot give the words; if you can give the words, give them? A. Well, I couldn't say. I think that Mr. Barrett went along the same line. Mr. Barrett of course had nothing to do with any of the conferences I guess that were held with Mr. Loewe previous to that time, consequently he knew nothing about it.

6909 Q. Or said nothing about it, you don't know what he knew? A. He said nothing about it I know.

Q. Was there any motion made there at the conclusion of those remarks? A. Yes, there was.

Q. What was it? A. There was a motion made by some of the members that they would return to the factory and finish up what work they had to do and stop.

Q. Was that motion put to the meeting? A. Yes, sir.

Q. What happened to it? A. It was carried unanimously.

6910 Q. About how long had this meeting lasted, to the best of your recollection when the motion was put and carried? A. The meeting didn't last very long, in the neighborhood of half an hour possibly.

Q. Did you make any remarks yourself? A. No, sir.

Q. Now I want to call your attention,—no, first I will ask you whether there was another meeting held at that same place the next day? A. There was.

Q. Were you present at that other meeting? A. Yes, sir.

6911 Q. Who was present then? A. I believe all the employees or nearly all of the employees in Mr. Loewe's factory.

Q. Both union and non union men, and almost all of them? A. Yes, sir, union and non union.

Q. Well, did either Mr. Barrett or Mr. Maher make any address at that second meeting? A. Yes, Mr. Maher made a talk at the second meeting.

Q. Can you repeat the words that he used? A. No, I could not repeat the words.

6912 Q. Then give me, according to your best recollection you have got, of the substance of what he said, if you have any recollection? A. I can remember that he expressed himself as being pleased with the union men coming out, or the non union men rather coming out with the union men and that he thought it would be only a question of a few days when Mr. Loewe would unionize his factory if the men would stay out. He also told them that if they would stick by the union men that he would use his best endeavors, or do what he could toward getting them membership in the organization.

Q. Have you stated all that you now recall of your best recollection of what Mr. Maher said at that meeting? A. Yes, that was all that I could recall now. 6913

Q. Let me see if I can refresh your recollection from your testimony at the last trial; was anything said about the Roeloff strike or the Berg strike at that time? A. Yes, I think there was, I think Mr. Maher did mention it.

Q. Do you remember what he said about it? A. He stated that they were after getting through with the strike of the Roeloff Company and the Berg Co., and they had both unionized their factories and that he believed it would only be a question of a few days or a few weeks at the most, when Mr. Loewe would unionize his factory. 6914

Q. And he pointed to those as reasons for believing that Mr. Loewe would soon be unionized? A. Yes, sir.

Q. Do you remember whether any action was taken at that meeting in response to Mr. Maher's remarks? A. No, I don't remember of any action being taken at that meeting.

Q. Did you hear any of those non union men express any opinion as to what they would or would not do? A. I couldn't mention any of their names but I did hear different remarks about that they were willing to stay out as long as the union men. They were not very well satisfied with the conditions that existed in the Loewe factory at that time, and on that account alone, or principally they were willing to stay with the union men. 6915

Q. Was anything said by any of those men that they were anxious to join the union or not? A. Yes, they all expressed a desire to join the union.

Q. Well, now, I am going to ask you some specific questions in regard to your recollection of what was said by Mr. Maher and Mr. Barrett at this meeting; take the first meeting; where did you stand or how near were you to Mr. Maher when he was addressing the meeting? A. I was not very far away, within a few feet, five or six feet. 6916

Q. I simply want to know Mr. Shalvoy whether you were near enough to him, or whether the address was delivered in a tone of voice that you would not hear it nor-

6917 mally? A. Oh, yes, hear every word he said. We were all, Mr. Barrett and Mr. Maher and myself were together at one end of the hall. The hall itself was not very large, not over 20 feet wide, I don't think.

Q. Then I am going to ask you whether, to the best of your recollection, you heard Mr. Maher say at that meeting, that it would do Mr. Loewe no good to employ non union help, "because we have our men ready who will go on the road and ruin his business"? A. No, sir.

Q. Did you hear him say anything of that kind at the second meeting? A. No, sir, never heard him make
6918 a remark of that kind.

Q. Or at those two meeting anything of that general character or substance? A. No, sir.

Q. Did you hear Mr. Maher say to the non union men at the second meeting that if they wanted to make their living at hatting, they would have to do as the union men told them to do, or words to that effect? A. No, sir.

Q. Did you hear at either of these meetings Mr. Maher say that those who were not with the union would
6919 be treated in the same way we treated those in the Roeloff factory, meaning, they would not take them back into the union again? A. No, sir, it was not said.

Q. So far as you know, Mr. Shalvoy, did or did not you or any person with whom you spoke or communicated with in ergard to this matter, have any intention at the time that strike was precipated in Mr. Loewe's factory, or sending agents out on the road to follow Mr. Loewe's goods? A. No, sir.

Q. You mean that you did not? You see the form of the question is such that I don't know which way you have answered? A. Oh, I did not.

6920 Q. You attended a meeting of the board of directors of the United Hatters held on August 6th, 1902? A. Yes, sir.

Q. In what capacity did you attend that meeting? A. As Sargeant at arms of the meeting.

Q. Do you remember who were present at that meeting? A. I don't remember all of them no.

Q. Well, I have the record before me, let me refresh your recollection. Was John Cords there? A. I think so.

Q. William C. Hannelly? A. I don't remember **6921**
Mr. Hannerly, being there.

Q. You think Mr. Hannerly was not a member of the board of directors, was he? A. I don't think so, I don't remember.

Q. Charles J. Barrett? A. I remember him, yes.

Q. He is since dead, I believe? A. Yes, sir.

Q. Martin Gorman? A. Yes, sir.

Q. William A. Brennan? A. Yes, sir.

Q. John Horrigon? A. I don't remember him being there.

Q. Patrick Lynch? A. I remember Mr. Lynch. **6922**

Q. You remember the fact of the matter pertaining to the firm of D. E. Loewe & Co. being taken up at that meeting? A. Yes, sir.

Q. Do you remember what action was taken upon it? A. There was a motion passed as I remember it, referred the D. E. Loewe & Co. matter or trouble to the executive board with full power, I believe with the power of the board of directors.

Q. Now see whether this refreshes your recollection and is the resolution to which you are referring:

"Resolved that the general executive board have full **6923**
authority to deal with the Loewe matter in such a way as in their judgment the best interests of the trade will be served." Is that the resolution which you had in mind? A. That is the resolution, yes.

Q. Do you remember whether you went to see Mr. Loewe in the connection with an attempt to get him to come to the meeting? A. Yes, I did.

Q. And he declined to do so? A. He declined to do so, yes, sir.

Q. And then on the following day, August 7th, you were present? A. I believe so, I think I was pres- **6924**
ent at nearly all of those sessions at that meeting.

Q. Now as a matter of fact, Mr. Shalvoy, isn't it so, that that last resolution that we talked of, was laid over? A. Well, I don't remember.

Q. The records speaks of the first motion "that the matter be laid over until tomorrow morning. Motion carried." A. As I remember it, the resolution was passed.

6925 Q. Then the second day the resolution was passed in regard to the subject of leaving the matter, or referring the matter to whom, do you remember? A. To the general executive board as I remember it.

Q. Well, let me see if this refreshes your recollection—yes, that is right, it was. You were not there as taking part in the voting at that meeting, Mr. Shalvoy? A. No.

Q. You were simply there as sargeant at arms, and you are speaking of your recollection as a spectator? A. That is all. There were times, I was in and out, that
6926 I was not there all the while.

Q. When was your attention first called to the fact that any of those agents of the United Hatters on the road were following Mr. Loewe's customers? A. The first recollection that I had that any particular stress was being laid on Mr. Loewe's goods by an agent was the reports of those different agents that were printed in the Journal.

Q. They were printed in the Journals, you saw them? A. Yes, sir.

6927 Q. And the matter did not come to your attention or knowledge or information until that time? A. No, sir.

Mr. Beach:

That is all, you may cross examine.

CROSS EXAMINATION

By Mr. Merritt:

Q. The United Hatters of North America have continuously engaged in the boycotting business ever since it was formed, have they not, down to the time of the
6928 suit anyway? A. No, sir, not to my recollection or to my knowledge.

Q. Well, when did they first commence boycotting? A. Well, as I say the first recollection that I had of any boycotting if you can call it boycotting, was what I read in the journal.

Q. Well, we don't differ as to the word boycotting I guess, but it is an attempt to prevent the sale of a man's goods, that is what I mean by boycotting, I don't think we need be any more exact than that? A. Well, what I

define as boycotting is making a special effort on any particular firm. 6929

Q. Or any attempt to prevent any dealer from handling non union goods? A. Well, the agents business, the agents were placed upon the road to advertise the label of the United Hatters of North America, it has always been their duty, or supposed to be their duty.

Q. Now how do you know what their duties were? A. Why, only as I understand them, I understood it.

Q. Where did you get your information? A. I got it from general talk of the officers.

Q. And the records? A. And the records and reports. 6930

Q. And from their own reports? A. Their own reports.

Q. And you would assume that any matters they had reported on from year to year, unless any objection had been made to them, were matters within their authority? A. Yes, sir. I was going to say, going around to different dealers, retail dealers or jobbers, advertising the labels, and endeavoring to have the retailers and jobbers handle hats that bore the label of the United Hatters of North America. 6931

Q. Well, in view of the records that you know of in this case, and the records of your own organization, you do not for a moment think that they were going outside of their authority when they were boycotting the manufacturers, do you? A. Well, I have no knowledge to answer that one way or the other. I don't know what their instructions were.

Q. Now let us start at the beginning of my question, whether it has not always engaged in boycotting; I want to agree with you on that before I get through, if I can. You have seen that circular of which that is a copy, haven't you? (Showing the witness a circular concerning the Hat Label). A. Undoubtedly, of course I saw several circulars. 6932

Q. Well, circulars of that type? A. Yes, sir. If it was not that particular one, it was one of the same general nature, and I probably saw that. I have seen, I think, nearly all of the circulars.

6933 Q. Those were sent out by the United Hatters of North America when it was first formed, wasn't it? A. Yes, sir.

Q. So that from the very time it was first formed, anyway, it was engaged in boycotting? A. Well, I wouldn't consider that boycotting.

Mr. Mulholland:

You are referring now to 1896?

Mr. Merritt:

1896, when the organization was first formed.

6934 Q. This was necessarily sent out in very beginning wasn't it? A. Yes, that was sent out, I guess that was one of the first circulars that was sent out? Now I will read this to the jury, if you will mark it as an exhibit.

Plaintiff's Exhibit 113, Boycotting Circular headed, "United Hatters of North America."

Mr. Merritt:

Then follows the union label and it begins:

"Brothers: The attention of all who wear felt or fur hats (either soft or stiff) is respectfully called to the Union Label of the United Hatters of North America. It can be found under the sweatband of all union-made

6935 hats, and is sewed or stitched in.

In May 1894, we issued a circular calling attention to eleven non-union or scab concerns at Danbury, Conn., and requested organized labor to assist our unions to bring this unfair and wealthy combination to terms. Three of these firms have become 'fair' or union during the past year. The fight is still on against the other eight firms, and with the assistance of organized labor and the union label we are confident that we will bring them to terms. The following are their names, and where goods are sold from: Meeker Bros. Goods sold by C. H. Tenney

6936 & Co. 8 Washington Place, New York City. Wm. Beckerle & Co. Goods sold by Taylor & Seely, 201 Greene Street, New York City, D. E. Loewe & Co. goods sold by Connett, Read & Co., 17 Waverly Place, New York City. E. A. Mallory & Sons, goods sold by Raymond Hawes & Co., No. 2 W. 4th St., New York City and Chicago. C. H. Merritt & Son, goods sold from 22 Washington Place, New York City. T. C. Millard & Co., goods sold from 14 Waverly Place, New York City. White, Tweedy

& Smith, goods sold from 14 Waverly Place, New York City. 6937

We would most earnestly appeal to you to help us in our fight against these employers of scab or non-union labor, and would ask as a special favor that you would appoint committees to visit the retail hat dealers in your locality and inform them that members of labor organizations and their friends are not obliged to purchase hats from people who handle the goods of the above-named firms, or of any other firms, who run 'foul' or non-union shops, or, in other words, who are not entitled to use the union label. 6938

If you will do this for us it will enable us to conquer this unfair and wealthy combination. You will confer a favor by informing us of the results of your action. Help us in this our hour of distress and we will never forget it.

We desire to return our sincere thanks to organized labor for the support accorded our label in the past, and we hope to merit the same assistance in the future. James Graham, President; John Phillips, Secretary, 477 Park Ave., Brooklyn, N. Y.; Edward Barrett, President, Edward Moore, Treasurer." 6939

I notice here, Mr. Shalvoy, that under Phillips name was first printed "Hat Finishers' International Association" and under Mr. Moore's name, was first printed Hat Makers' National Association, and those names have been crossed off and there has been written in, "United Hatters of North America." Does not that indicate that this circular was printed just before the United Hatters was formed in 1896, and that it was evidently sent out after the amalgamation? A. Yes, that is what it would indicate to me, because those were the officers of the two national associations previous to the amalgamation. 6940

Q. And after the amalgamation Edward Barrett was President of the United Hatters? A. Yes, sir.

Q. And Edward Moore was treasurer, was he not? A. Yes.

"The Hatter's union label is to be found in all fair-made hats. When retailers offer to put a label in a hat for a customer, it is good evidence that the label is a counterfeit and the hat a scab-made one. Retailers are

6941 not allowed to handle the label. Some retailers discriminate against union-made hats by charging a higher price for them than for the scab-made article. This is dishonesty on their part. Owing to the superior skill of union workmen, a better and cheaper hat is made in union factories than in non-union ones.

Retailers are now ordering their supply of hats for next season, and members of labor organizations should urge the retailers in their localities to insert in their orders that all hats, (both soft and stiff), must have the union label in them or they will be returned.

6942 In answer to repeated inquiries from labor organizations, would inform you that the factory of the John B. Stetson Company, Philadelphia, Pa. with an office at 750 Broadway, New York, is not a Union one. It is what we call a 'foul' or a non-union one. Edward Miller, of 164 and 1147 Broadway, New York, gets his hats manufactured by the Stetson Company, and consequently the Miller hat is a scab-made one.

The Youmans hat is also a scab-made one. It is manufactured by the 'foul' shop or non-union firm of Henry H. Roelofs & Co., Philadelphia, Pa. Youman's principal 6943 stores are at 158 and 1107 Broadway, New York City.

The following Philadelphia firms are 'foul' or non-union: Frank Schoble & Co., 9th and Oxford Sts.; Price & Vogt, 1702 Tulip St."

Then there is some writing on it, I won't attempt to read.

Now when you reported to the Journal in 1902, I want to know if you didn't refer to circulars of this nature, and I want to just read an extract from your report. After referring to the Hatters there as you stated, "It was 6944 from this fund that the first aggressive advertising of the Hatters Label was done. If I remember correctly over 75,000 circulars were sent out to all the labor organizations throughout the country advertising the label, and calling attention to some of the worst scab shops in the country such as James Marshall, Fall River; John B. Stetson and Henry Roeloff of Philadelphia, C. H. Merritt & Son of Danbury, and others that have since become fair."

Now my question was whether that report was referring to circulars of the kind I have read? A. I was going to say, I would not be surprised if it referred to that

circular, but possibly not. It was similar to that, yes. 6945
Now don't you regard a part of that circular as boycotting? A. I would not consider it boycotting, no.

Q. When you specifically direct your attention to particular manufacturers and call upon all organized labor and their friends never to do business with anyone who handled the goods of any of these particular manufacturers, whom you called scab manufacturers, don't you call that boycotting? A. No, that is not my idea of boycotting.

Q. Is that your idea of booming the Union label? A. That is my idea of booming or advertising the union 6946
label.

The Court:

What is boycotting as you understand it? A. Where you make a special effort against any particular firm.

The Court:

Well, don't you ask them to make special effort there in that circular? A. Well, there is so many different concerns mentioned in it.

The Court:

Go on, Mr. Merritt:

Mr. Merritt: 6947

As long as I understand you, what your position is, so I can understand your testimony, we won't have any trouble.

Then I will re-frame the question which I put to you at the very beginning, so as to try and come within your language. Isn't it true that the United Hatters of North America is trying to prevent the sale of goods of particular manufacturers after the manner of this circular? A. Well, every effort has been—their effort has been to sell hats that bore the union label. That has been their effort primarily. 6948

Q. And that is what you regard that circular? A. Yes, sir.

Q. Don't you call that circular primarily an effort to prevent the sale of those particular manufacturers? A. No, I wouldn't say that I did.

Q. This circular calls upon all organized labor and their firms not only to buy union goods, but not to buy any goods, union or non union, from any dealer that

6949 handles or carries its line of goods in connection with union goods.

"We would most earnestly appeal to you to help us in our fight against these employers of scab or non-union labor, and would ask as a special favor that you appoint committees to visit the retail hat dealers in your locality and inform them that members of labor organizations and their firms are not obliged to purchase hats from people who handle goods of the above named firms, or of any other firms who run foul or non-union shops, or in other words, who are not entitled to use the union
6950 label."

A. Yes, but that did not call upon all members of organized labor not to purchase, it says that they are not obliged to purchase, which is true.

Q. The purpose of it is to inform the retailers that they will lose the patronage of organized labor if they go on doing business with them, with these particular manufacturers, isn't that it? A. Well, I don't know what the purpose is. I did not draw it up, or had nothing to do with drawing it up.

Q. I will ask you if it is not true, that your organ-
6951 ization has been engaged in working on that kind of business, or has been engaged in work of that sort, ever since it was formed? Either making statements through agents, or through circulars to parties or to the purchasing public of that nature? A. They have sent out several of these circulars, yes.

Q. And they have been doing it continuously from the very time it was formed, is not that true? A. Well, no, I don't think it is true.

Q. Let us read what you testified at the last trial
6952 in that regard. Now after referring to this circular I asked you "(Q.) And you knew of that personally? (A.) Yes, sir. (Q.) And for a long period of time subsequent to the amalgamation has that been done? (A.) Well, from what time?" And you said, "I think possibly a year before the amalgamation was the first circular that was sent out. (Q.) And then how long did they continue down to the time of the suit? (A.) Well, I guess they are sent out yet sometimes. (Q.) You don't think the circulation of circulars of that kind throughout the country was ever discontinued from the time it was com-

menced down to the commencement of this suit? (A.) Not permanently, no." A. Well, I say that now, that they are still sent out but not continuously. 6953

Q. There have been interruptions? A. Yes.

Q. "(Q.) And can you tell in what quantities they were sent out? (A.) I could not. (Q.) Very large quantities weren't they? (A.) I couldn't say. (Q.) Well, I guess you knew about it once. You once said in an article to the Journal that there were 75,000 sent out at one time." I think that covers all you have said on that point. Now let me look for a moment here for an article in the Journal of Sept. 1898, page 6, in that Journal. 6954

"In the last issue of the Journal we said our members were not aware of the great amount of work that our secretary is doing, by corresponding with labor organizations of the country asking them to help us unionize the unfair factories, by calling on the dealers who handle their hats, and asking them to discontinue using them, until the firms that make them put a genuine label in them. We gave letters from both the unions and the dealers showing how effective the work is; but better even than that showing, is the record of 16 non union factories made fair in 18 months. Among those factories are several of the largest in the country. At the present time there are 4 or 5 of the most prominent non-union factories making inquiries to know on what terms their factories will be taken under our jurisdiction. 6955

As will be seen from the numerous letters from the unions in reply to letters from our secretary asking them to appoint committees to call on the store keepers selling hats and notify them that union men could not patronize anyone who deliberately gave assistance to its enemies, every section of the country was covered. This work is done so quietly that a number of our members cannot believe it is effective. They believe that if one or two men were sent on the road to visit unions and call on the dealers, asking the one not to buy hats unless the hatters label was in there, and acquainting the others with the unfair way the men who work in foul shops are treated, we would unionize the unfair shops faster than at present." 6956

6957 "One man could not visit more than seven cities a week giving one day to a city, and could not visit more than two or three organizations in a night, and his expenses would not be less than $1,000 a year. It would be impossible for any man to do the effective work that is being done by our communications, for they reach all sections of the country at the same time. Even the unions are notified before the goods are shipped, and frequently their committees induce the dealers to countermand the orders."

6958 Do you know how your union obtained information in advance where goods were being shipped? A. No, sir.

Mr. Mulholland:

What are you reading from?

Mr. Merritt:

The Journal.

Q. Now don't you call that boycotting? What I have read to you? A. No, I would not call that boycotting.

6959 Q. Well, I understand at any rate you assent to the proposition that your organization has with some interruptions been carrying on that kind of work from the time of its formation? A. From the time of the amalgamation?

Q. Yes, since 1896. Now that brings us down to 1898. In 1898 the Berg trouble came on, didn't it? A. I am not sure of the year, about that time I should judge.

6960 Q. I just want to show that this is a continuous matter and on Sept. 15, 1899, the members "of our association who were employed in the Berg factory were officially notified, etc." This is from Mr. Moffitt's report of 1900, of the 1900 convention, so I guess we can agree on that proposition.

Now you knew that from a period of about eleven months following the strike in the Berg matter, agents were sent on the road to follow down Mr. Berg's goods, didn't you? A. All I knew in reference to that was what I read in the journal.

Q. And then what you wrote as secretary of this organization, when they came around and reported that

they were trying to chase down Mr. Berg's goods? A. 6961
That was from the report, I believe, from Mr. Brady.

Q. I think so, yes, sir? A. That is what I say, all that I know about that is what I read in the Journal and heard secondhanded.

Q. Let us not be too hasty on that. All you knew you heard from Mr. Moffitt's report and the other matters which took place at the 1900 convention? A. Yes.

Q. Together with the journals and such reports or the representations made of the representatives, who came around to your local? A. Yes, sir. Mr. Brady is the only man that ever came there. 6962

Q. You gathered your information from all those sources? A. Yes, sir.

Q. Well, now don't you recall as a matter of fact —well, from all three of those sources that agents were employed particularly to run down Mr. Berg's goods? A. No, they were out, the agents were on the road before the Berg trouble started.

Q. I see. How long before, Mr. Shalvoy, I didn't know that. A. I couldn't say how long, maybe a year or two.

Q. And from the date of the Berg trouble they were directed to bestow their attention upon Mr. Berg's customers, 6963
weren't they? A. Well, I don't know about that.

Q. You judged that from the record? A. Yes, I would.

Q. You read that from the record? A. I would judge their attention was particularly called to the Berg strike.

Q. Well, you remember Mr. Moffitt's report that he had found out that he had sent the agents to that particular part of the country where Mr. Berg's customers were? A. Yes, but to tell you the truth I never put much stock in Mr. Moffitt's report.

Q. Well, how about Mr. Brady's report, did you take 6964
any stock in that? A. Well, I don't know of any report that Mr. Brady made, only the talk that he made to the meeting, and I think that was shortly after the strike started.

Q. Well, among other things, he said,—I want to be sure you know what your organization is doing, you were secretary and sent these minutes for Feb. 7, 1900? A. Yes.

"Mr. Daniel Brady of Orange, N. J., addressed the meeting on the strike in Berg & Co. he said in part that he was here in the first place to thank the Hat Finishers Association of

6965 Danbury for their grand assistance during the trouble with Berg & Co. Another reason he was here was to give the Hatters of Danbury some information regarding the strike and to tell you what was being done with their money. He said that when they entered on the strike it was their intention to force Berg & Co. fair, and from the evidence he had received when he left Orange, he was convinced that they were right and Berg & Co. will be forced to make their factory fair or go out of business. There are six men on the road working on the Berg & Co. hat."

Then he goes on to tell about the demoralized condition in
6966 the factory, and follows with the statement that the hats were coming back like an army of ants. That sounds familiar to you doesn't it? A. Yes, I recollect that.

Q. You wrote that yourself? A. Yes, sir.

Q. From your recollection which was fresh at that time as to what that man said? A. Yes, sir.

Q. Who was Brady? A. He was a hatter from Orange, N. J.

Q. Had been an officer, hadn't he? A. I don't think so. Well, he was a director I believe at one time.

Q. Now why did he come at that time? A. Well, the
6967 record states, doesn't it that he came there—

Q. To address the meeting in the first place and to thank them, etc. It was in connection with a special assessment levied, wasn't it, on all the members in connection with this trouble? A. I don't think so. I have no recollection of any special assessment being brought up at that time.

Q. Now in a report two or three months later, we find this, April 11, 1900, which was also your minutes.

"Mr. Daniel McGrath who is one of the agents sent on the road to advertise the label on the Berg affair, gave quite a
6968 lengthy statement of his experiences and successes while on the road. Mr. James P. Maher the National Treasurer also made a statement of the affairs as they existed in Orange and Philadelphia.

Motion, that it is the sense of the meeting that that we uphold the national officers in the stand that has been taken and that we keep up the 2% assessment."

A. Well, I say, I don't think Mr. Brady's visit to our association had any reference to that assessment.

Q. How about Mr. McGrath that I have just read? A. Or his either.

Q. Well, that special motion was passed immediately after Mr. McGrath made his report, and passed the convention. That is the matter that Mr. McGrath had reported on. A. Yes, but they were already paying that special assessment for some time previous to Mr. McGrath's report, I take it, from the record you have read here. **6969**

Q. And you pass the motion here that "we keep it up." A. Yes, sir.

Q. Don't you infer that Mr. McGrath came there so that the members would be satisfied to continue the special assessment to carry on this work? A. Not as I remember it. I can remember the reason that Mr. McGrath attended the meeting. Mr. McGrath belonged to our association, or did at that time, he was a member of the Danbury Hat Finishers Association, and he was home on a visit. He was not to that meeting for any particular purpose, but he was home on a visit, and came to the meeting, and while there somebody called on him to make a report. That is how it came about. **6970**

Q. Did he explain why he was there? A. I say, he was just home on a visit and came down to the meeting. We held the meeting while he was home, that was all, it was a regular meeting.

Q. He gave quite a lengthy statement, and stated he was there to thank them for the assistance they had given during the Berg trouble? A. Mr. Brady? **6971**

Q. Yes, that is what Mr. Brady stated? A. Yes.

Q. There is no question in your mind but what these agents of the United Hatters were engaged in directing their attention to Mr. Berg's customers during the period of the Berg controversy? A. Not a bit, no.

Q. That brings us down to about August 1900. Now when did the Roelof trouble begin? A. I couldn't tell you I have no record of the dates.

Q. There is no doubt in your mind is there while the Roeloff trouble was on, your agents were engaged in running down the Roeloff goods? A. To a certain extent I suppose all of them, they were all on the same basis as Berg and Roeloff. **6972**

Q. I mean going particularly to Mr. Roeloff's customers and trying to get them to discontinue dealing with Roeloff? A. Well, I don't know about that, I have no recollection about that, no information in regard to that.

6973 Q. Now to begin with Mr. Hennerly reports in November 1901, or the report in the Journal concerning it, where he says he is still in the west advertising "our label and boycotting the scab concern of Henry H. Roelofs of Philadelphia, Pa."

There isn't any doubt in your mind as to what Mr. Hennerly was up to, is there, at that time? A. Not to take it from his reports, no.

Q. You haven't any reason to doubt his reports have you? A. Why yes, I have some reason for doubting some of the reports.

6974 Q. You want to doubt all the records, you want to doubt Mr. Moffitt's record and the reports of the agents? A. I don't want to doubt any of them, that is, only those that I am satisfied that I know different.

Q. Do you know anything different about Mr. Hennerly? A. No, I don't.

Q. Then you haven't any reason to doubt that? A. No, I have not.

Q. Now in the Journal for November, 1901, it states "There are at present travelling business agents covering all the states of Ohio, Illinois, Indiana, Iowa, Minnesota, Texas, 6975 California and also some of the New England States. The returns are very encouraging, and the early capitulation of Mr. Roelof is looked for.

The Youman hat is manufactured in this factory."

There is no doubt in your mind, but what those agents primarily were directing their attention to Mr. Roelofs goods is there, after reading that? A. No.

Q. We will go on, I don't want to read everything, but taking an extract from the union journal or a little later one of February, 1902:

6976 "You executive board also sent out four agents to different parts of the country where the Roelof hats are most in demand, and I desire to say that the efforts of our agents have been very gratifying to those in charge of the strike.

Agent W. Hannerly was sent to the northwest, was out only a short time when I received a telegram from one of the largest hat jobbers in St. Paul, Minnesota, asking for a cessation of hostilities until such time as he could get to Philadelphia and see what could be done about an amicable adjustment of the trouble." That is a report of Mr. Moffitt's in the Journal.

Now in the Journal of March, 1902, Mr. Kelly of Dan- 6977
bury, Connecticut National Travelling Representative, has just departed for the south after a vigorous effort in behalf of the union label. Rest assured, that he proved himself greatly detrimental to the interests of Henry H. Roelof & Co."

Q. You regarded that action of Mr. Kelley's as boycotting, didn't you?

The Court:

Did you answer?

The Witness:

I don't see anything in that, where it says anything about boycotting. It is speaking of Roeloff there. Just read that 6978
again please.

Q. "Rest assured, that he proved himself detrimental to the interests of H. H. Roelof & Co." A. I don't see anything boycotting about that.

Q. You didn't infer he was engaged in boycotting from that. A. You could infer certainly.

Q. Did you infer so? A. Yes, from the statement, but there is nothing definite about it.

Q. Then you did see something? A. Yes, I saw something about it.

Q. Let me read to you some resolutions which Mr. Mur- 6979
phy had passed and it appeared in the Journal for March, 1902.

He says, "When I first visited the labor organizations I found it a difficult task to have them appoint committees to call on those firms mentioned." He has just mentioned some dealers.

"I visited seven firms, and did a good day's work. It is asking a great deal of an organization to have it appoint a committee which must, in carrying out its instructions lose a day's work, so in order to overcome this difficulty I borrowed a typewriter and printed a number of circulars, of which the following is a copy:

6980

Buffalo, N. Y., 1902. Mr. Charles Faul, 546 Main Street, Dear Sir: The following resolutions were adopted at our regular meeting at the convention in Council Hall, this evening: Whereas, the hat manufacturing concern known as Henry H. Roelof of Philadelphia, Pa., continues to ignore the just and equitable demands of the United Hatters of North America in their recognition of organized labor, in the adopting of those principles of fair play which are uppermost in the minds of every free American, and whereas the firm of Henry

6981 H. Roelof & Co. has been placed upon the unfair list by organized labor of the country, and whereas, the strike ordered by the United Hatters of North America in May, 1901, is still in vogue, owing to the fact that a few hat dealers continue to handle the product of this unfair concern, and whereas the retail hat seller known as Chas. Faul, 546 Main Street, is now offering for sale this unfair hat, therefore be it resolved, that we request the above mentioned dealer to cease handling Roelofs hats under a penalty if not being complied with, of withdrawing our patronage."

6982 Do you regard that as boycotting? A. Yes, I would regard that as boycotting, certainly.

Q. Then there is no doubt that Mr. Murphy at that time was engaged in boycotting Mr. Roeloff, is there? A. That is according to the representatives of the report.

Q. This is Mr. Murphy's report, and he goes on and he says, "I have no knowledge, etc." Well, I won't read any more of it.

Do you know Mr. Murphy? A. I know who he is. I was not personally acquainted with him.

Q. He was not a Danbury man? A. I believe he was.

6983 Q. Did you know any of these other agents? A. Yes, I believe so. I don't know whether he was, I know he was in Danbury at times, yes, but whether he made his home in Danbury or not, I couldn't say.

Q. Did you know any of the other agents? A. Yes.

Q. Knew Mr. Kelly? A. Yes.

Q. Mr. Lynch? A. Yes.

Q. Who else? A. Mr. McGrath.

Q. Did you know Mr. O'Haire? A. I knew Mr. Lee.

Q. Did you know Mr. O'Haire? A. No, I don't.

6984 Q. Who is the man who had charge of those agents? A. I always understood the general executive board had charge of it.

Q. It was not under any one man? A. Not that I understand, no.

Q. Report was made to by John Moffitt? A. Yes.

Q. Do you know whether John Moffitt had possession of those reports today? A. I do not.

Q. Now Mr. O'Haire reports in the Journal of March, 1902:

"Dear Sir: In visiting the following labor organizations, Trade and Labor council, Building Trades' council, Retail

Clerks' association, I succeeded in having committees ap- 6985
pointed from each of them to assist me in my work. The stores here that handle Roelof's goods have, save one exception (Cooper & Co.) agreed to place no more orders for those goods until the strike is settled. Organized labor here is very anxious to assist the hatters, as they look upon the hatters as the most progressive organization affiliated with the American Federation of Labor. In the case of Cooper & Co. the Central Labor body has taken up the fight against them, and their finish is in sight. I will leave here according to your instructions for Memphis tonight, and will start in there with a vengeance on the parties whom you wrote me about. Will wire on my 6986
arrival."

Well, after reading that would you call that boycotting? A. Well, I don't know, that is boycotting in a sense, I suppose.

Q. Then there is no doubt in your mind that Mr. O'Haire was trying to prevent the sale of Roelofs' goods? A. No question about it.

Q. Now Mr. Kelly starts in the Journal of March, 1902, to John A. Moffitt; "Dear Sir: Having completed a very successful campaign against the 'R' goods on the Pacific Coast, 6987
according to your instructions, I crossed the great desert and arrived safe and sound in Texas. (That R. refers to Roelofs goods)."

There is no doubt in your mind that Mr. Kelly was attempting under Mr. Moffitt's instruction to prevent the sale of Roeloff's goods? A. There is no doubt in my mind but what they were all attempting to prevent the sale.

Q. In other states that the state where the manufacturer was doing business? A. Why sure, certainly.

Q. Well, I don't want to go through all these with you if I haven't got to but the point I want to bring out is this, as 6988
soon as agents, or as soon as Roelof was unionized, the agents turned their attention away from Mr. Roelof's goods, and were waiting for instructions for the next job. A. Well, that isn't so, they were on the road all the while.

Q. Now let us see whether it is not so, that is just what I am getting at. The Roelof concern was unionized on the 19th day of July, 1902, four days, or five days before Mr. Barrett came to you and told you to direct the union men to attend a meeting, that is according to the record, and I don't suppose

6989 you care to dispute the record do you? A. No, but I thought it was some time before that.

Q. Well, let us get our thoughts straight on that subject to start with.

The Witness:

I don't want to dispute the record, only as I say, I had it in mind it was some time before, that is all.

Q. This is what I want to point out that Mr. Loewe made his final reply to Mr. Maher and the national officers on the 22nd day of April, 1901. The Roelof trouble started on the 20th day of April, 1901. Mr. Loewe was left alone after

6990 that primarily, until the 24th day of July, 1902, which was five days after the Roelof trouble had been finished. Now what I want to point out to you is in the face of these dates, that the agents had finished with Mr. Roeloff five days before Mr. Maher addressed them on White St. in Danbury, and were waiting for further instructions, and that if Mr. Maher had said that those agents were ready to go on the road to destroy Mr. Loewe's business, he stated what was an actual fact, isn't that true? A. They were on the road, they had never stopped.

6991 Q. Isn't it true that if Mr. Maher had said that those agents were on the road ready to injure Mr. Loewe's business, that he stated what was the actual fact? A. Well, I don't know about that.

Q. Isn't it true that right after Mr. Loewe's strike, took place, they were told to direct their attention to Mr. Loewe? A. I have no knowledge of that either.

Q. Now Mr. Shalvoy when we took our recess we had seen that the Roelof trouble had ended on the 19th of July, and that notice was given to call out the Loewe men to a meeting five days later on the 24th day of July, in Danbury; that

6992 up to the time of the Roelof settlement, the agents on the road had been directing their attention against Mr. Roelof's goods. Previous to that time, during the Berg fight, they had been directing their attention against Mr. Berg's goods; now you assent to that proposition, don't you? A. Yes.

Q. You do not assent to the proposition that there were agents on the road on the 24th day of July, five days after they had finished with the Roelof affair, ready to go on the road and ruin Mr. Loewe's business? A. Why, I assent to the proposition that there were agents on the road, for they were never taken off, not to my knowledge any how.

Q. You assent to the proposition that as a matter of fact, a short time before the Loewe strike, those agents were directed to turn their attention to Mr. Loewe's goods and try to interfere with his sales, don't you assent to that? A. Possibly, although I have no direct knowledge of such action. **6993**

Q. No, I am not saying direct knowledge, but general information? A. Yes, I do.

Q. For instance, they report in February, 1903, which of course was some five or six months after the Roelof trouble had ended.

Q. The strike inaugurated at the factory of D. E. Loewe & Co. in Danbury in October last, is still in vogue, and we look for a very early settlement as our five agents on the road are working hard to this end." So that in February, some time prior to February, five agents were on the road, directing their attention to Mr. Loewe's goods in 1903, and up to the time of the end of the Roelof trouble in July 19th, 1902, they had been directing their attention to Mr. Roelof, and prior to that time during the Berg trouble they had been directing their attention to Mr. Berg; you assent to that proposition? A. Yes, I assent to that, that is, I say as I said in the first of it, I believe, in a general way, they were on the road to advertise the label. Of course they possibly centered their efforts although I don't know whether they were instructed in that way or not, to center their efforts on these particular firms you have mentioned. **6994** **6995**

Q. Now I have just been going with these reports with you in order, one after another, to show you what actually had happened, and I presume you are willing to stand upon the record, aren't you? A. Yes, sir.

Q. And which you read, you stated you have read them. Now in the Journal for August, 1902, Mr. Hannerley reports from Philadelphia—

The Court:

I don't quite understand the witness. I understood him to say that he did not know about that, but he assents to that being the fact. **6996**

The Witness:

From the general information I can get.

The Court:

Didn't you read it over before that?

Witness:

Yes, that is the only information I can get.

6997 The Court:

Then you mean in the time of it when you read it, you knew it was going on?

Witness:

Yes, through those reports and as I say, a great many times those reports are made and they are elaborated upon a good deal more so than is really the fact. I think that is right, but I have no direct knowledge, only as I read from those reports.

Mr. Mulholland:

6998 My understanding is that this witness admitted having information as to notice of these different things. I don't understand that he has personal knowledge of what actually occurred, only from the reports.

The Court:

I wanted he should testify to these things instead of counsel.

Q. You don't mean to question those records? A. I don't, I don't question them.

Q. Then what do you mean by stating that they are elaborated? A. I mean that there are reports, certain re-

6999 ports, not only from the agents, but from the officers at different times, things that I do know about that I know have been elaborated upon in their reports.

Q. What do you mean about reports of agents, didn't you state to me, that you knew nothing about it, except what you had read? A. I don't know anything about them, I am speaking about some of the officers.

Q. Some of the officers told you they were elaborated. A. No, the officers' reports I mean.

The Court:

I don't understand that you mean that the agents on the road, that their reports were elaborated? A. Not that I know

7000 of.

The Court:

But the officers? A. Yes.

Q. Now in the Journal of August, 1902, Mr. Hannelly reports:

"I have been detained in certain New York Districts doing detail work for the organization which will not be proper to publish at this time. Now that the factory of Henry H. Roeloff & Company has been unionized, we should be just as anxious to encourage the sale of their goods, as we were to dis-

courage them prior to the unionizing of the factory, through our agents and otherwise." 7001

And in the following Journal he says, under date of August 21st:

"I arrived in this city on the 30th instant, and pursuant to your instructions I immediately started to visit the houses who were handling the products of the unfair Danbury concerns."

At the end of the same report he adds:

"Owing to the nature of my work, and just entering a new fight which requires a great deal of caution and time, and prevent me from writing a lengthy letter, etc." I have not got 7002 the balance of the report here, but "I don't give any further report," or something to that effect.

Then it is a fact, is it not, Mr. Shalvoy, that some time between the unionizing of Roeloff on the 19th of July and the 21st of August, both in the year 1902, Mr. Hannelly was instructed by Mr. Moffitt to turn his attention from the Roeloff who had just been unionized, and which he had been working on for over a year, and to thereafter start in and turn his attention toward Mr. Loewe's customers; the record shows that, doesn't it? A. I take it so from the record, although, as I have said, I have no knowledge. 7003

Q. And we know by February, 1903, that all five agents were working on Mr. Loewe's goods according to Mr. Moffitt's own statement, then I will put my question to you; if Mr. Maher at that meeting in Danbury on the 25th of July, 1902, told the union and non union men that it would do Loewe no good to get non union men, that they had agents on the road ready to ruin his business, Mr. Maher stated what was true, didn't he? A. I have no knowledge of the fact.

Q. According to your information from those records, he stated what was true, didn't he? A. Well I don't know as I could answer that either. 7004

Q. As a matter of fact, Mr. Loewe did get non union men, and the agents were turned on the road to injure his business, weren't they? A. From the records it appears so, yes.

Q. Now are you going to testify that Mr. Maher did not say this, or are you testifying that you don't remember his saying it? A. I testify I did not hear him say it.

Q. You testify positively that you did not hear him say it? A. Yes, sir.

7005 Q. That is not a matter of pure memory on your part? A. I think not.

Q. You are perfectly clear in your mind? A. I think so. If I heard him make a remark of that kind, I am positive I would remember it.

Q. Now Mr. Maher has always been perfectly free, hasn't he, to advise the men who elected him as to what the organization was doing, he never concealed anything, has he, that you know of? A. No, not to my knowledge.

Q. And the natural and proper thing for him to do would be to tell those men what their organization was doing,
7006 and what the agents were prepared to do, wasn't it? A. Of course I was never associated with Mr. Maher very much only in a friendly way. He belonged to a different organization than I did.

Q. At that time he was an officer of the National organization, wasn't he? A. I believe he was.

Q. And if he had made a full and frank statement of what the conditions were, he would have necessarily made that statement which you say he did not make? A. Well I wouldn't want to answer that one way or the other.

7007 Q. Now your organization, United Hatters of North America, has an organization, according to its own laws, was actively engaged in boycotting, was it not? A. Only from the records is the only information that I have of it.

Q. That is the reports of your officers and agents? A. Yes, sir.

Q. And you knew that your organization, the United Hatters of North America, met every four years, didn't you? A. Yes, sir.

Q. Under its laws? A. Yes, sir.

Q. That was the association meeting, wasn't it? A.
7008 Yes. Well every three years, sometimes three years, and sometimes four years.

Q. According to Article 4, Section 1, on your constitution, "Regular sessions of this association shall be held every four years." A. I was going to say, there was a convention held in 1896, the next convention was held in 1900, that was four years, and the next convention was held in 1903, that was only three years.

Q. The next one was 1907, and the next one 1911? A. Yes.

Q. Now Section 3 of Article 4 of your Constitution says: "Proceedings of all regular conventions shall become a law immediately on the final adjournment of such convention, and shall remain so unless repealed by a two-thirds representation of the local association in manner as hereinafter provided for." 7009

"Sec. 4. In voting for the proceedings of conventions the vote shall be as follows: 'Local associations shall be entitled to one vote for every ten members or majority fraction thereof. The number of votes shall be based on the number of members in the district as stated in the semi-annual report last issued prior to the meeting of the convention. It shall require two-thirds of the total vote of the districts to annul new laws or amendments to existing laws.'" 7010

Now turning to Section 3 or Article 4, as I understand it, according to the statement here, "Proceedings of all regular conventions shall become a law immediately on the final adjournment of such convention." That is true, is it not? A. That is the law, yes, sir.

Q. Then these printed convention proceedings, including this of 1903, state the law of your organization, don't they? A. Yes the law.

Q. And if any member objects to what has been done at that proceeding, or the resolutions that have been passed relating to boycotting or otherwise, it is within the power of your membership to recall what has been done by a two-thirds vote, is it not? A. Yes, sir. 7011

Q. And as I understand it, nothing in those proceedings of 1900 and 1903 have ever been recalled by your association? A. Not to my knowledge, no.

Q. Well now you knew that the American Federation of Labor, at the instigation of the officers of your organization had passed resolutions boycotting every dealer who handled non union hats, did you not? A. No, I can't say that I did. 7012

Q. I just want to call your attention in passing to these resolutions against Henry H. Roeloff & Co.: "Resolved, that we call upon the Internation, National and Local unions affiliated with the American Federation of Labor to give all the assistance possible to the United Hatters of North America in the unequal fight they are at present so manfully making against wrong and oppression, and we hereby pledge ourselves not to patronize any dealer or dealers who handle the product

7013 of non union hatters, and more particularly the product of the firm of Henry H. Roeloff of Philadelphia, Pa."

You knew of those resolutions, did you not? A. Possibly I might have read those, yes.

Q. It is in the report of President Moffitt which you heard, you stated? A. It seems as though I heard that resolution before, although as I say I couldn't tell where.

Q. And you knew that similar resolutions had been passed at the convention in 1899 relating to F. Berg & Co., did you not? A. I knew there were resolutions passed, only I couldn't say what convention.

7014 Q. Concerning F. Berg & Co.? A. Yes, sir.

Q. And of the same nature as this? A. I presume so, yes.

Q. And nothing has ever been done by your membership to take any vote to recall such action or rescind it? A. Not to my knowledge.

Q. Were you one of the parties that introduced the Berg resolution? A. I don't think so, no, I was not at that convention.

Q. It was your brother, Mr. Frank Shalvoy? A. Yes, he was at one or two of those conventions. I don't know 7015 whether he introduced that resolution.

Q. Can you procure me a copy of the Connecticut State Federation constitution? A. I think so, I am not sure. I will try.

Q. I wish you would. You went to the 1898 convention of the American Federation of Labor as a delegate of the Connecticut State Federation of labor? A. Yes, sir.

Q. You attended the convention of the Connecticut State Federation from time to time? A. Yes, sir.

Q. And the various local unions, the Hatters unions in Danbury, were all a part of the Connecticut State Federation, 7016 were they not? A. Yes, sir.

Q. And paid dues toward it? A. Well for these last twelve years or so. I don't know whether they were at that time or not. I guess they were. I will answer yes to that.

Mr. Davenport:

You mean 1898?

Witness:

I think it was long about '97 or '97 they became affiliated with the American Federation of Labor.

Q. When was that provision put in your constitution of the United Hatters requiring you to affiliate with the Central Labor unions, etc.? A. I couldn't say what convention that was, I think possibly 1900 or 1903, either one or the other. 7017

Q. Were you on the auditing committee of the President's report in 1900? A. I believe I was.

Q. Now I want to ask you about that (showing the witness a statement). That is the report or the statement that you audited? A. Is it the President's report?

Q. That is the financial report, the financial statement of the President's report? A. Well that is what I audited, yes, the financial part of the President's report. 7018

Q. How comes it that the President had the financial report to be audited at this time? A. I believe he had charge of the Berg strike.

Q. Then under ordinary circumstances the President makes no financial report, does he? A. No.

Q. It was because he was put in special charge of the Berg strike that he made this financial statement? A. He had more or less money, and he made that statement.

Q. He was authorized to incur expenses in connection with the Berg fight? A. I presume so, I have no knowledge of it. 7019

Q. That was only in connection with the fight that he was authorized to incur expenses, wasn't it? A. I think so. As I say, I have no direct knowledge.

Q. It is not customary for a financial report from the President; that is only because he had charge of this particular fight? A. That is all.

Q. Then this entire report is a report in connection with the Berg fight, isn't it? A. I think so to the best of my recollection now. Of course that is some time ago.

Q. Of course, the records show that he was authorized to take this fight up and incur such expenses as were necessary? A. The directors first authorized the general executive board and the general executive board authorized the President, as I understand it. 7020

Q. But what I want to call your attention to is these agents are ordinarily paid, the secretary of the organization pays them, or the treasurer, don't they, advertising expenses will be paid by the secretary or treasurer now? A. They are now. I don't know how they were then. They are now, but I couldn't say as to how they were paid at that time.

7021 Q. But here, under the head of Moffitt's report on the Berg struggle, I find on January 15th, John Horrigan, Edward McClintock, expenses as agents, $130; January 18, T. D. McGrath, expenses as agent $100; James Burne, expenses as agent $240; Daniel McGrath, that is the same man who went and spoke before your organization? A. Yes, sir.

Q. Expenses as agent $105 and George B. Hands, expenses as agent $100. T. D. McGrath, expenses as agent $105, and Edward J. Brady, expenses as agent $100. That is the same Mr. Brady who spoke before your organization? A. Yes, sir.

7022 Q. To Martin Lawlor, expenses as agent $100; O. M. Partelow, Central Labor Union of Butte, $45; Mr. Eichelberger, Secretary of the Maryland Labor Union, $15.

Then on the following page, I have not attempted to read all of the items, but the jury can see it there, "Money forwarded by telegraph to agents on the road: January 1st, McClintock, Atlanta, Georgia, $51.57. T. D. McCarthy, New Orleans, La., $42.53, to these various agents, covering numerous different cities and numerous dates on the whole page.

Then on the following page, salaries of those agents.

7023 Then on the following page we find Detective and private work, expense of $83 for detective work. And on the following page, incidental expenses of strike committee, covering miscellaneous bills, $232.

On the following page, 318, expenses and car fare of President, and at the bottom of that page, strike benefits, $7.221, and the whole amount down as expenses incurred is $18,513.74. Now what I am getting at is that all this money was paid to the agents by telegraph to different cities where they were operating, by salaries and by cash disbursements, and the money paid to the central labor unions, and such funds

7024 was all money paid in the fight against Berg and not to advertise the union label, isn't that true? A. Yes, that appears to be true.

Q. Did you see the vouchers for these various expenses?

A. Yes, sir, I believe so.

Q. Who else was on that committee with you?

The Court:

You mean the auditing committee?

Mr. Merritt:

The auditing committee.

Witness: 7025

I think Mr. Bailey was on, I don't recollect the others. I would not be sure who the others were. I think there was three.

Q. William P. Bailey was one, and yourself another. Mr. Shalvoy, Mr. Bailey and Mr. Connelly, all of them defendants in this case, were the auditing committee.

Witness:

I think that is right.

Q. After that report was presented it was acted upon, wasn't it, by you gentlemen? A. By the convention?

Q. First by you gentlemen making the report? A. Oh 7026
yes, we made a report, yes.

Q. And I will read the committee's report on page 323 of the convention proceedings for 1900, which is plaintiff's Exhibit 3.

"Your auditing committee on the financial report of President Moffitt on the conduct of the Orange strike report that they audited said report and found it correct in every detail, all moneys being accounted for and vouchers shown for the same. Your committee feel that they would fail to perform their full duties if they did not call to the attention of the delegates the admirable manner in which the financial affairs 7027
of the strike have been conducted by President Moffitt and his associates.

Your committee find that the President and some of the agents on the road have only received fifteen dollars per week, and that others have received eighteen dollars per week for that same work. We would recommend that all be paid eighteen dollars, and that those who have not received it be paid the balance to make that amount. While the committee recognizes the superior ability and rare good judgment of President Moffitt in the conduct of the strike, they recommend that that in the interest of harmony and good feeling through- 7028
out the trade in general, its compensation be the same, this recommendation to refer only to the present time, and to have no bearing on the future.

Approved by the full Committee, W. P. Bailey, Chairman."

"Motion made that the report be adopted and the recommendations contained therein be concurred in."

Then follow the names of the voters taken by yeas and nays. All yeas, no negative.

7029 Q. Martin Lawlor, William P. Bailey, Martin Gorman, Patrick Connelly, Hugh C. Shalvoy, I can't tell you in regard to all these men, the first names are not given, but somewhere in our records it does appear who was present.

Q. Did you know, Mr. Shalvoy, that the Roeloff strike had just been completed when you first heard of the request to call the Loewe men down to the meeting? A. Yes, I knew it had been completed, but as I said a few moments ago, or a little while ago, I thought it was a longer time than had intervened.

Q. What was the first that you ever heard that there was any attempt on foot to unionize the Loewe factory? A. Why 7030 the first that I heard was a conference between Mr. Maher and Mr. Loewe.

Q. Over a year or two before? A. Well I couldn't say how long it was before.

Q. Long before the actual strike took place? A. I don't think it was long, I thought it was just shortly before the strike took place, but as I say, whatever the fact is, I am ready to accept it, because I didn't know of those conferences.

The Court:

Did you know of the plans to attack Loewe's factory in the manner in which it was?

7031 Witness:

No, sir.

The Court:

As soon as they got through with Roeloff?

Witness:

No, sir, I knew nothing about that until the matter was brought to my attention.

Q. Did you hear of more than one meeting between Mr. Loewe and the National officers? A. Yes, I heard of several meetings.

7032 Q. You knew negotiations had been going on for some time? A. Yes.

Q. Now on the 24th day of July, 1902, Mr. Barrett came to you and asked you to arrange for a meeting, is that true? A. I think that is about the date.

Q. I won't mislead you on the date. A. I have not the date, but I think that is it.

Q. Mr. Barrett was the first man that talked to you about this at this time? A. You mean—

Q. About unionizing the Loewe factory? A. About having the men come to the meeting, you mean?

Q. Yes. A. Yes. **7033**

Q. He was the first man at this time that you talked with about unionizing the factory, wasn't he, I mean within a month or so? A. I don't know as he was talking with me about unionizing the factory at all. I was speaking—I did talk with Mr. Maher, and Mr. Moffitt I guess previous to that time, about these conferences and the effort to unionize the factory.

Q. Yes, yes, but on the 24th day of July, did you talk with any one else besides Mr. Barrett? A. Not that I have any recollection of.

Q. Did you see Maher on that day? A. I don't think **7034** so, I don't remember.

Q. Did you know what effort was made to notify the makers in the factory? A. I don't.

Q. And you followed the instructions of Mr. Barrett? A. Yes, sir.

Q. And you are quite sure that Mr. Maher did not instruct you also? A. Oh yes, I know he did not instruct me.

Q. Oh I see, you talked with both Mr. Maher and Mr. Barrett at that time? A. Oh I say, I am sure Mr. Maher did not instruct me.

Q. What authority had Mr. Barrett to call those men **7035** down to the meeting? A. Why as president of the organization, he has authority to call the members of any shop together at any time.

Q. Can you show me in what provision of the constitution the president has such authority? A. There is no law, it is merely a custom which has always been followed out.

Q. So when Mr. Barrett told you, you did not question it, but you went and made arrangements to have the men called down to the meeting? A. Yes, sir.

Q. So you sent word by Mr. Donnelly? A. Yes, sir.

Q. He was a union finisher working in Mr. Loewe's fac- **7036** tory at that time? A. Yes, sir.

Q. You instructed Mr. Donnelly to notify the men to attend the meeting the following morning? A. The members of our organization.

Q. When do you usually hold meetings of your organization, when did you at that time? A. At that time I think we used to hold them every three months, January, April, July and October.

7037 Q. Did you hold them in the evening? A. Yes, at eight o'clock.

Q. Why did you call them out at the beginning of the business day, instead of calling them out in the evening, at the time in which you usually call men out to a meeting? A. This was a meeting of the shop, a shop meeting.

Q. Yes, but it was called by virtue of the authority of the president of your organization? A. I called them to meet the next morning on his instructions. He fixed the time.

7038 Q. Can you explain why it is he chose to take those men out at the beginning of a business day, interfering with their work, instead of calling the meeting in the evening when the meetings are usually called? A. No, I have no explanation for that.

Q. Did you know that on the 24th day of July Mr. Maher had called up Mr. Loewe and tried to meet him, or to get him to come down to the Groveland Hotel and talk over these matters? A. No I have known of it since, but I didn't know of it at the time.

Q. And Mr. Barrett did not say to you "that Mr. Loewe won't come down and talk this matter over, therefore we are going to call all the men out in the morning?" A. No, I

7039 don't think he did.

Q. Now you stated that Mr. Maher then said to these men that if Mr. Loewe won't unionize, why we don't think he should have any union men, is that correct? A. That was the drift of his talk, yes.

Q. And they thought they ought to take the men out and send them to union factories? A. Yes.

Q. Now as a matter of fact, Mr. Shalvoy, you did not vouchsafe any explanation of that kind at the last trial, did you? A. I don't know, I am sure.

7040 Q. You don't recall? A. I don't recall.

Q. As a matter of fact, when the men were called out, they did not go to any union factories for some time after they were called out, did they? A. No, I think the most of them went to union factories right away, that is, within a week or so anyway.

Q. They waited first to see whether Mr. Loewe was going to give in, wasn't that it? A. Possibly for a few days.

Q. Then when they saw Mr. Loewe was not going to give in, you told the men they better seek work elsewhere, wasn't that it? A. Well I don't remember as anybody told

them. I guess they went looking for work after they saw how things were going. 7041

Q. As a matter of fact, you were not going to supply the union factories with those men if Mr. Loewe gave in, were you? A. No, sir.

Q. Then it was not from any desire to aid those union factories that you called those men out? A. Well I understood at that time that it was the desire, yes, to aid them.

Q. You are willing to stand on that statement, are you? A. Yes, sir.

Q. You don't care to make any further explanation of it? A. I say I am willing to stand on that explanation. 7042

Q. You are willing to stand on that statement that the object of calling those men out of Mr. Loewe's factory to attend a meeting, was not to benefit your union factories? A. No, that is not my statement.

Q. Well I didn't understand you then. I thought that was rather of a queer statement. That was not the object? A. I assumed there was an effort being made to unionize the factory, no question about that.

Q. Then the object of calling the men out was not to benefit the union factories? A. Not principally, no. I think the primary object was to unionize the Loewe factory. 7043

Q. And in other words, to put him in such a predicament that he would feel obliged to unionize in order to avoid damage to himself? A. I presume that was one of the objects.

Q. Now on the morning of the 25th of July, you met with Mr. Maher and Mr. Barrett in that hall on White Street where the men were addressed? A. Yes, sir.

Q. What hour did you convene? A. I couldn't say exactly the hour, no, I should judge about nine o'clock, nine or ten o'clock in the morning.

Q. Was that a room where the meetings of your organization were ordinarily held? A. No. 7044

Q. It was an unusual thing to hold a meeting in such a place? A. It was a small hall. Of course where we held our meetings usually of the organization, we met in City Hall.

Q. A larger place? A. A larger place.

Q. Because there are more men? A. Yes, sir.

Q. What is the usual attendance at your meetings?

The Court:

What is the date, or what was it?

7045 Q. What was it in 1902 and 1903? A. You mean average attendance?

Q. Yes. A. There is times when we would not have one hundred present, then again if anything of particular interest was coming up, why we might have 300. I should judge about an average attendance would be 125 or 150, somewhere along in there.

Q. Now at this meeting on White Street, you don't know who hired the hall, do you? A. I don't know the name of the hall, I don't know as there is any name to it.

7046 Q. You don't know who rented the hall? A. No I don't.

Q. As I understand it, the union makers and union finishers of Mr. Loewe's factory were present at that meeting on this morning of the 25th? A. Yes.

Q. But no non union men as far as you know? A. There wasn't any non union men.

Q. Are you perfectly sure on that point that there were makers and finishers both present, and that they were all members of the organization? A. Yes, sir.

Q. Perfectly clear? A. Yes, sir.

7047 Q. Then you stated that there were in all about fifty or sixty, didn't you state? A. I should judge it was about fifty or sixty, about there.

Q. Mr. Maher addressed them then? A. Yes, sir.

Q. And had you seen Mr. Maher before you see him there at the meeting? A. Not that I recollect now.

Q. As far as you recall, you met Mr. Maher at that meeting for the first time? A. Yes, sir.

Q. Now who told you to be there? A. Oh I naturally went there out of curiosity. I don't know as anybody told me to be there.

7048 Q. Now you stated, as I remember it, that Mr. Maher told of the various meetings that he had had with Mr. Loewe, or in a general way, stated he had various meetings with him? A. Yes.

Q. Did he state that he had met the officers of the United Hatters? A. Possibly did, I wouldn't say for certain because it is so long ago that I don't recollect everything that he said.

Q. Did you testify that Mr. Maher hired the hall? A. I testified that I believed that, I understood since, yes. I did not know it at that time.

Q. You didn't know it at the time? A. No. 7049

Q. You are right. Did you tell Donnelly to tell the men where to come to the meeting? A. Yes.

Q. Now you haven't any idea how it was the makers got down there? A. No I have not. I presume, I don't know, but I presume that Mr. Maher notified them. I don't know, I couldn't say for certain.

Q. But you never heard anything about it? A. No, not that I recollect now.

Q. Now you say you don't recall everything that Mr. 7050 Maher said? A. No.

Q. Well you recall it well enough to deny some things, don't you? A. Well I deny some of those things that are of such importance that I would remember if I heard them saying it.

Q. Now at the first meeting didn't Mr. Maher mention the name of the Roeloffs? A. Not to my recollection, or within my hearing.

Q. Or mention the name of Berg? A. No.

Q. Did he say any thing about agents on the road? A. I don't think so, I don't remember, he might have done.

Q. Well are you perfectly clear in your mind that he didn't mention Berg and Roeloff at the first meeting? A. So 7051 far as I remember, yes.

Q. Well do you think you would remember? A. I think I would.

Q. You think he simply went to tell how they had been trying to unionize Mr. Loewe for some time past by having conferences with him, and that Mr. Loewe had refused finally to unionize, and that therefore he thought the union men ought not to work there any longer; is that your recollection of what was said? A. That is my recollection of his talk to the men.

Q. He did not state anything to the effect that they were needed in union factories, did he? A. Yes, he did. 7052

Q. You did not state so at the last trial, did you? A. I don't remember.

Q. Well I remember that you did not, and you were carefully interrogated as to everything that you stated. Now you stated that Mr. Barrett talked also? A. Yes.

Q. And that Barrett's talk was about the same as that of Mr. Maher? A. Yes.

7053 Q. Except he did not refer to the meetings he had had with Mr. Loewe, because he had not taken part in them? A. Yes, not with Mr. Loewe's firm.

Q. Now let me read the testimony on your last trial. "A. Mr. Maher I say addressed the men. He told them how —of the different meetings or conferences that he had had with Mr. Loewe in reference to trying to unionize the shop or having Mr. Loewe treat with the trade, and explained his first meeting; that Mr. Loewe received him very courteously and gave him considerable encouragement; when he left him Mr. Loewe took the matter under consideration, and with the un-
7054 derstanding that they were to meet again; and after two or three of these meetings Mr. Loewe finally told him that he had decided that he would have nothing to do with the organization and wouldn't treat with him in any way; and Mr. Maher went on further to say that under the circumstances that if Mr. Loewe didn't want to treat with the union, he believed that it was time that the union—that the members of the union should cease working for Mr. Loewe; that the benefit that the factory would derive from the skilled labor of union help should not be given to a man who did not wish to treat with
7055 either the men or the officers in regard to the condition under which they worked. After making these remarks, then Mr. Barrett I believe—well, Mr. Barrett did make a few remarks along the same line. Some of the members of the shop's crew that were there complained of the conditions that existed, and somebody made a motion—some of the members made a motion that they go back to the factory and get up all the work they had out and stop, and that motion was carried unanimously."

Don't you think, Mr. Shalvoy, that if you had recalled at the last trial that Mr. Maher stated that they needed the men in
7056 union factories, that you would have stated so in your testimony at that time? A. Well I might have overlooked that part of it, but it seems pretty clear in my mind that he mentioned that now.

Q. Now didn't some one get up and object and say "Why no, I don't think we ought to go out and leave Mr. Loewe in this way"? A. No.

Q. You didn't hear any one make any such statement? A. No, sir, the vote was unanimous.

Q. Yes, but there was a vote that they should go back and finish up their work? A. That they should go back and finish up their work and stop. **7057**

Q. And didn't some one say "I don't think it is fair to come out until we have finished our work"? A. No, I didn't hear anybody say so.

Q. Did you hear anyone speak at that meeting besides the two men whom you have referred to? A. I have no recollection of anybody speaking at that meeting only Mr. Barrett and Mr. Maher.

Q. You don't remember any of the union makers or finishers there saying anything? A. Not at the first meeting, no. **7058**

Q. Now coming to the second meeting, at this second meeting the non union men appeared, as I understand it? A. Yes.

Q. How did you happen to be at the second meeting? A. Why, interested.

Q. How did you know there was to be the second meeting? A. Oh I believe that was understood when the men adjourned from the first meeting, they were to meet the following day.

Q. Wasn't it understood that the non union men were to be there also? A. No, no it was not. Nobody knew anything about the non union men going to quit until they came down the next morning. **7059**

Q. That is, you don't mean to testify to what other people knew; you don't know? A. Well yes, I am testifying for myself, and I don't think any of the other officers knew anything about it.

Q. At the second meeting Mr. Maher got up and he delivered a talk which was primarily directed at the non union men, wasn't it? A. Principally, yes.

Court adjourned until 10 A. M. Thursday. **7060**

Thursday, October 3rd, 1912,
Morning Session, 10:00 o'clock.

CROSS EXAMINATION OF HUGH C. SHALVOY,

Continued by Mr. Merritt:

Q. Now, Mr. Shalvoy, coming to this second meeting on White Street, where you stated that both the union and non-union employees of Mr. Loewe were present, can you explain

7061 how it was that the non-union men knew the place and hour of the meeting? A. I presume they were told by the union men in the factory.

Q. And when the first meeting adjourned on July 25th, there was an hour fixed for the second meeting on the succeeding day? A. I think so, yes.

Q. Do you know what that hour was? A. I am not sure.

Q. Sometime in the forenoon? A. Nine or ten o'clock.

Q. Nine or ten o'clock? A. I think about that time;
7062 yes.

Q. And what officers were present at that meeting besides yourself? A. Mr. Barrett and Mr. Maher.

Q. The same ones? A. Yes, sir.

Q. No one else that you recall now? A. Not that I remember, no.

Q. Did Mr. Maher do most of the talking? A. Yes, he did.

Q. Did Mr. Barrett speak some? A. He might have said a few words; I guess he did.

Q. Did Mr. Barrett preside? A. I think he did; he
7063 was the presiding officer.

Q. Now Mr. Maher, as I recall your testimony, told these non-union men that they had been successful in unionizing Mr. Berg and Mr. Roelofs; that it would only be a matter of a few days before Mr. Loewe would be unionized, and that if the non-union men stayed out he would use his influence with them to get them cards? A. That was the purport of his talk, yes.

Q. Yes, well now, of course, he said a good deal more, didn't he? A. Sure, he must. He spoke probably—oh, eight or ten minutes possibly.

7064 Q. So that in the course of that talk he elaborated on these points which you remember now? A. Yes.

Q. And as I undrestand it he pointed to the success that the organization had had with Berg and Roelofs as an evidence of his statement that it would only be a matter of a few days with Mr. Loewe; isn't that true? A. He talked along those lines, that they were after unionizing the Roelofs concern and the Berg concern.

Q. And didn't he say, in effect, that those were larger concerns than Mr. Loewe's concern, so that we will have no

difficulty with Mr. Loewe and it will only be a matter of a few days? A. Well, I don't remember that remark, he might have said it. I have no recollection of him saying it though. 7065

Q. Now you know, as a matter of fact, that the two concerns he had picked out to convince those men that he would be successful with Loewe were the two concerns with which you had had your two greatest fights; that is true, isn't it? A. Yes, that is true.

Q. Well now, are you prepared to testify that Mr. Maher didn't say anything as to the character of the fight which they had had with those two concerns—the extent of the struggle which had gone on between the organization and those two concerns to which he referred? A. I have no recollection of him saying anything of that kind. 7066

Q. Well, he was trying, as I understand it, to convince those non-union men that in a few days only the men would be able to work in that factory, and that if they would go out he would use his best influence with them to have them made union men; that is the way you understood his remarks? A. Yes.

Q. And in order to convince them of that fact he said "Why we unionized Berg and we unionized Roelofs." Now isn't it true that he also stated that those men did everything they could to prevent unionizing them; thought they would be successful in fighting it, and some of their men relied on them, but it was not so for they had to give in and their men were at the mercy of the organization, or something to that effect? A. I have no recollection of any remarks of that kind; no. 7067

Q. Now, as a matter of fact, your organization had unionized some fifty concerns within a comparatively few years, hadn't it? A. I couldn't say the number.

Q. Well, a large number? A. A large number, yes. Of course a great many of those came in voluntarily; made application of their own volition. 7068

Q. And you don't think Berg and Roelofs did? A. No, I don't.

Q. But whether they did or not this matter which will perhaps be brought out in this trial a little later, if the manufacturers are produced, as the defendants state that they are going to be; as a matter of fact, the only two concerns which Mr. Maher referred to were the two concerns whom they had compelled to unionize? A. This Roelofs and Berg were the only two that I have any remembrance of.

7069 Q. Well, can you explain why it is that he picked out those two concerns of all they had unionized, unless, as stated, that they had been successful in coercing them and would therefore be successful in coercing Mr. Loewe? A. They were the two most recent concerns that had been unionized; I suppose that was one of the reasons why.

Q. That is not true, is it? A. I think that is true, yes.

Q. Well, let me see, to refresh your recollection; weren't there a large number of concerns that were unionized after Berg was unionized? A. I don't remember.

7070 Q. Well now, I think you will if you think about it for a moment; didn't Mr. Connett come in after Berg was unionized? A. I don't know what time they unionized their factory. I don't know the date.

Q. It was after the Berg fight, wasn't it? A. I could't say for sure.

Q. Well, didn't Mallory come in after Berg was unionized? A. I couldn't say as to that. I have no recollection as to the dates that the Mallory and Connett concerns came in. Of course, the records will show that.

7071 Q. The record will show. I am not going to take the trouble to go into all of them by any means. I will just read one statement from Mr. Moffitt's report, referring to the year 1900, Mr. Moffitt says: "Within three weeks after the Berg fight and with only a show of opposition the Connett firm lowered its colors to the union. The five factories in Newark, I. C. Heden; Johnson & Hannoch; Boutelier & Carr; and Daley & Co. fell into line and accepted the lines and principles of our organization in the conduct of their establishments." Then he speaks about the concern Meyer Mercy. Then he goes on to say, "During the closing months of 1900, which will remain on record as the banner year for the United Hatters, there were added to the list of union factories, besides those already named, those of C. B. Rutan & Co., West Orange; the Newark Hat Co.; Goodman & Co. and Kridel's, all of Newark; the Pioneer Hat Works of Wabash, Ind.; and E. A. Mallory & Sons of Danbury"; so you see by the record that a large number of concerns were unionized after the Berg concern was unionized; so you haven't any explanation to offer as to why Mr. Maher directed his finger to Mr. Berg and Mr. Roelofs at this time? A. The only answer that I can give to that is that they being the recent cases in which there was any strike, that they were fresh in his mind; that is the only reason

7072

that I can give why he referred to those two particular cases. **7073**
By Mr. Merritt.

That is they being the recent cases in which there had been any strike? A. Yes. Those other concerns all came in voluntarily; that is to the best of my knowledge.

Q. To the best of your information, you don't know in regard to Connett? A. I don't know in regard to Connett, I know Mallory came in.

Q. You do know in regard to Mallory? A. Yes.

Q. You don't know, of your own personal knowledge, in regard to the others? A. No; but I have heard.

Q. That is just what I wanted to find out. Then after **7074**
Mr. Maher picked out these two concerns in which there had been a recent struggle, didn't he explain to the men there that there had been this fight with these two concerns and that they were larger concerns than Mr. Loewe, and that they being unable to stand up Mr. Loewe would be unable to stand up? A. I have no recollection of any remark of that nature.

Q. Now didn't he state to these men that if they wanted to earn a livelihood at hatting they better do as he told them to do? A. Not within my hearing.

Q. Didn't he state that because of the conditions in Dan- **7075**
bury they would find it very difficult to continue the trade of hatting unless they were in the union? A. I don't remember any such remark.

Q. What were the conditions in Danbury at that time; most of the factories were union, were they not? A. Yes.

Q. But he made no reference to that fact? A. Not that I recollect; no.

Q. He simply told them, in effect, that the factory would be unionized in a few days; or, in other words, in a condition where none but union men could work in it? A. In his opinion; that was his opinion.

Q. Yes, in his opinion; and he said this to the non-union **7076**
men there who couldn't work there unless the union took them in after it was unionized? A. Yes.

Q. Now you stated that as far as the first meeting goes, Mr. Maher didn't mention the Berg or Roelofs, etc. Now aren't you confused in regard to this; I think in Mr. Maher's testimony here himself he testified that at the first meeting he told about Berg & Roelofs, etc., and that he said substantially the same thing over again at the second meeting? A. Well I don't—I have no recollection of it. Of course, he might have

7077 said it. As I remember it, that was brought out at the second meeting.

Q. And not at the first? A. And not at the first.

Q. Now, Mr. Shalvoy, if these union men hadn't come out they would have been liable to a fine, would they not? A. Oh, no.

Q. Isn't it true that your organization pursued that practice?

The Court:

That is if they were directed to go out and did not, they are not liable to a fine? Is that what you say? A. No, I didn't

7078 answer that question. He asked me if those union men didn't go out they would be fined.

Witness:

They were not ordered out. If they were ordered out by the trade why then they might be subject to a fine; but this was just merely—

Mr. Beach:

What do you mean by the trade? Tell the jury what you mean by the trade. A. Why the association.

Mr. Beach:

That is if the association ordered them to go out? A.

7079 Yes.

By Mr. Merritt:

Q. Well, you stated that Mr. Barrett as President of the organization, had authority to call them down there at the beginning of a business day—interrupt their work; now, wasn't that an order from the trade? A. That was just to a meeting; just to what we call a shop call. Mr. Barrett had no authority, or Mr. Maher either, to order them out.

Q. Only temporarily? A. Only just to a meeting of that kind.

7080 Q. He had authority to call them out at any time of day to a meeting? A. Yes.

Q. And isn't it true that your organization, through Mr. Maher told them that they were undertaking this work of unionizing the factory? A. How is that; I didn't catch that?

Q. Isn't it true that your organization, through Mr. Maher, told them that they were undertaking the work of unionizing the factory, and that was the reason he called them down there? A. Yes, he told them there that other dealers of Mr. Loewe wanted them to unionize the factory.

Q. And where men refused to go out when a movement was on foot to unionize a factory, weren't they then liable to be fined? A. If they were ordered out they would be, yes. I mean by that if they were ordered out by the vote of the association. 7081

Q. And you are willing to testify that none of the men in Mr. Loewe's factory were directed to come out? A. Yes, sir.

Q. And that they all came out there and stayed out without any directions from the union? A. Without any orders.

Q. And that that unanimous action on their part was without any orders from the union? A. Yes, sir. 7082

Q. You are aware of the fact, aren't you, that union men had been working in this factory for a great many years? A. Yes, for about nine years, I guess; eight or nine years—about nine years.

Q. And you are aware of the fact, aren't you, that since this strike took place there never has been a union man work in that factory? A. Why, yes; I am.

Q. And you mean to say that you regard that unanimous change as due entirely to the voluntary action of the men themselves without any order from the union? A. Yes, sir.

Q. Did you hear Mr. Barrett say to Joseph Haig that if he didn't come out he would be fined five hundred or a thousand dollars, or may be lose his card? A. No, sir. 7083

Q. Now you make some statement here, in the course of your examination concerning the reports of your officers to the effect that they were elaborated, or something of that kind. A. Yes, that is what I said.

Q. Now what reports were you referring to? A. Mr. Moffitt's.

Q. At the convention? A. Yes, sir.

Q. Which conventions? A. 1903, I think it was; I am not sure which conventions now. The report that referred to the unionizing of all those different factories. 7084

Q. Is that the only particular which you had in mind in which he had elaborated, beyond what you think was true? A. Well, that is the only thing that I can call to mind now.

Q. Now after that report was made you voted to approve it didn't you, at that convention? A. I possibly did. I am not sure.

7085 Q. No one voted against it, did they; there wasn't a word of disapproval of dissent expressed at the convention that you recall, was there? A. No, there wasn't.

Q. And Mr. Moffitt was unanimously re-elected after making that report? A. I think so; I am not sure about that.

Q. Well, now, taking up the meeting of the Board of Directors, you were present at that meeting when the Loewe matter was discussed? A. Yes, I was.

Q. Now I want to know if this is not true as to what took place at that meeting; didn't those officers report upon the fact that they had taken up this matter with Mr. Loewe some
7086 time ago? A. I believe so.

Q. And didn't they state that they had been obliged to postpone it on account of the Roelofs trouble, and that now having finished the Roelofs trouble they were ready to take the Loewe case up again? A. I don't remember about that.

Q. Well, is your memory clear at all as to what was said at that meeting? A. No, it is not.

Q. Well, now you remember that the Roelofs matter was taken up and then immediately following it the Loewe matter was taken up, don't you? A. At that meeting?

Q. Yes? A. No, I don't remember. I couldn't say
7087 that I remember of hearing the Roelofs matter spoken of at that meeting. It may have been.

Q. Well, I will just read the record from the minutes of that meeting which was held at Danbury, August 6th, 1902. "President Moffitt stated that his reasons for calling a meeting of the Board at this time was to make a report on the termination of the Roelofs strike, and also to take action on several other matters of importance to the trade which required their immediate action. Motion that call for meeting be accepted. Motion carried. President Moffitt then made a detailed statement of the Roelofs case, going over the whole business from
7088 beginning to end, and concluded by reading the agreement entered into between the firm of Henry H. Roelofs and the United Hatters of North America. Voted that the report of President Moffitt be accepted and endorsed. Voted that the matter pertaining to the firm of D. E. Loewe & Co. be made the special order of business for the afternoon session." Now you haven't any recollection which would warrant you to dispute the record as to the fact that this Loewe matter immediately followed the Roelofs matter? A. No; I was going to say

that I didn't think that I was present at all the first morning's session. 7089

Q. Well now, at the afternoon session the matter was discussed at great length, according to the record? A. Yes, I believe it was.

Q. Well, didn't they go into the question of agents being on the road, or should be sent on the road to interfere with the sale of his products? A. I don't remember anything about the agents being spoken of.

Q. Well, do you remember what was said during this entire afternoon discussion? A. No, I don't. All I remember is that the matter was discussed thoroughly by nearly all the directors, I guess. I don't remember just what was said. 7090

Q. Your local officers were in favor of unionizing the Loewe plant, weren't they? It is so stated here in the record? A. Oh, yes; we are anxious to unionize all the factories that we can.

Q. Yes; now at this meeting it was stated that the men had come out of the factory, wasn't it? A. Yes.

Q. And Mr. Maher reported as to what action he had taken in the matter? A. Yes, Mr. Maher reported.

Q. He covered the whole subject, didn't he? A. Yes, from the start up to the present time. 7091

Q. So that the Board of Directors were fully informed as to what he had done? A. Yes.

Q. And the motion was passed "Motion that the report of the General Executive Board on the Loewe matter be accepted and their action endorsed. Motion carried." Now that endorsement covers all that the General Executive Board, including Mr. Maher, had done in connection with the matter, didn't it? A. Yes. And—

Q. And after hearing this report—or, excuse me, I didn't mean to interrupt you? A. I say that the motion carried with it that effect. 7092

Q. And after hearing this report and passing this resolution of endorsement this resolution was passed: "Motion that the Board of Directors delegate full power to the General Executive Board in their efforts to unionize the Loewe factory; don't you recall that? A. Yes, I recall, but I am willing to accept the record; yes. Of course I don't recall the exact wording of the resolution.

7093 Q. Now in the Danbury News for July 26th, 1902, on page 4, appears this statement: "The Loewe matter. United Hatters induce non-union men to leave the plant. No agreement regarding the unionizing of the factory of D. E. Loewe & Co. has yet been arrived at between the firm and the United Hatters of North America. The hatters union is determined to unionize the factory, and the firm announces that it will continue to do business as before. Yesterday the officers of the Hatters union removed all of the union men from the factory and several of the non union operatives. Today, the officers went
7094 further and induced all of the non-union men to leave. The officers declined to state under what conditions the men were induced to stop work. Today there are no men working in the factory." Did you read that in the Danbury News of July 26th, 1902? A. Why, the chances are that I did, although I have no recollection of reading it.

Q. Did you ever hear any of the officers say that this account of their activities was untrue? A. What do you mean, what you just read?

Q. As appearing in the Danbury News? A. I never
7095 heard them speak of it one way or the other.

Q. You never saw any article in the News contradicting that either? A. No, I didn't; not that I recollect anyway.

Q. Well, I will ask you this; you knew in the case of the Berg matter that the men who worked in the Berg factory were not allowed to get cards—a great many of them—didn't you? A. No, I didn't know that.

Q. Now you stated that you heard that some of the men stated dissatisfaction in Loewe's factory? A. Yes.

7096 Q. Now can you give me the name of the man who stated that? A. Mr. Quill was one of them.

Q. Yes, who was the other? A. Mr. Hill.

Q. Mr. Robert Hill? A. Robert Hill. There were several others, but I don't remember their names, and some of them I didn't know their names.

Q. Now I put this up to you at the last trial and I said "I want their names, Mr. Shalvoy," and you said you could get them, and I said "Well I wish you would get them for us"? "A. I think so." Now did you try

to get the names of any of the men? A. Yes, there was one man, his name was Mr. McGrath. 7097

Q. How do you spell his name? A. McG-r-a-t-h, I think, McGrath.

Q. Was he a union man? A. He was a union man.

Q. Finisher or maker? A. Finisher.

Q. Working in Mr. Loewe's factory at that time? A. Yes, sir.

Q. And the other two men were Hill and Quill? A. Yes, sir.

Q. And they told you of some trouble relating to the prices in connection with a certain width of brim in the hats, didn't they? A. As I remember it now they got a raise on a certain brim—large brim; after they got this raise from Mr. Loewe I believe the committee— 7098

Q. In other words this grievance which you said they told you about was rectified long before the men came out? They had received this raise long before? A. I was going to explain.

Q. All right? A. After a committee waiting on Mr. Loewe he agreed to pay them ten or twelve cents a dozen extra for this large brim, but after receiving it for a week or two Mr. Fuchs took it off and cut them down back to the old price again. Mr. Fuch's being one of the firm, and I believe acting as foreman of the department. 7099

Q. But long before those men came out and this strike took place they were receiving this amount which they claimed they should receive, were they not? A. No; no; it was before they came out that they were cut down back to the old price, as I understand it.

Q. That is what they told you? A. Yes, sir.

Q. And was that Mr. Quill's statement? A. That was Mr. Quill's statement. 7100

Q. Now the other man was Robert Hill; did he state the same thing? A. No, his statement was in reference to flanging, I think.

Q. As a matter of fact, Mr. Robert Hill, although he expressed dissatisfaction in the factory, as you state, went back to work there for a considerable time after the strike, didn't he? A. I believe he did.

Q. Now this Mr. McGrath, what did he have to say? A. Well, he spoke of the poor earning power.

7101 Q. And do you know how long he had been in the factory? A. I don't several years; I couldn't say just how long.

Q. Do you know his first name? A. Thomas.

Q. Thomas McGrath? A. Yes, sir.

Q. And these are the only men that you can recall? A. These are the only ones that I knew, I guess.

Q. The only ones you know? A. Yes.

Mr. Davenport:

7102 And I was going to direct his attention to the answer which he put in here on the allegations of the complaint. It is paragraphs 12 and 13. "The defendants in this suit." It is alleged in the complaint "are all members of a combination or association of persons calling themselves and known as the American Federation of Labor, which includes more than a million and four hundred thousand members residing in the several states and territories of the union and in the Dominion of Canada, and in all the places of the several states where the wholesale dealers of hats hereinbefore mentioned and their customers reside and do business. Said combination is

7103 subdivided into subordinate groups or combinations comprising one hundred ten national and international unions or combinations, of which the said combination of persons styling themselves the United Hatters of North America is one, composed of twelve thousand local unions, twenty-eight state federations or combinations, more than five hundred central labor unions or combinations, and more than two thousand local unions or combinations, which are not included in the above mentioned national and international combination.

"13. Said combination of persons collectively known

7104 as the American Federation of Labor owns, controls, edits, publishes and issues a paper or magazine called the American Federationist, which it declares to be its official organ and mouthpiece, which has a very wide circulation among its members and others, and which affords a ready, convenient, powerful and effective vehicle and instrument for the dissemination of information as to persons, their product and manufactures, boycotted or to be boycotted by its members, and as to measures adopted and statements to be published detrimental to such persons and to the sale of their manufactures and for boycotting such

persons their manufactures and business; and said paper **7105**
has been and now is constantly used printed and distributed for said purposes among its members and the public, and was so used by the defendants and the confederates in boycotting the product of the firms of F. Berg & Co., of Orange, N. J., and H. H. Roelofs & Co., of Philadelphia, Penna., hat manufacturers, to their very great injury, and until the said firms successively yielded to their demands in pursuance of the general scheme of the defendants herein set forth.

"14. The persons united in said combination known **7106**
as the American Federation of Labor including the persons in said sub-combination known as the United Hatters of North America, constantly employed more than one thousand agents," etc. And now five years after this suit was brought, and six years after the occurrences on the 25th, you filed this answer July 11th, 1908: "As to paragraph 12, this defendant denies that he is a member of a combination or association of persons calling themselves the American Federation of Labor. As to the rest of said paragraph, this defendant has no knowledge or information sufficient to form a belief.

"As to paragraph 13 this defendant denies that the **7107**
so called American Federation of Labor is a combination of persons including this defendant; and as to the rest of said paragraph this defendant has no knowledge or information thereof sufficient to form a belief."

Now, Mr. Shalvoy, you have stated on your direct examination that you attended a convention held at Kansas City in 1898 of the American Federation of Labor as a delegate from the Connecticut State Branch of the American Federation of Labor, I believe? A. Yes, sir.

Q. That said Federation of Labor was composed of **7108**
delegates from all the local unions of the United Hatters in the State of Connecticut, was it not, among others? A. I am not sure. I don't think so. Not all of them.

Q. Well, Danbury; the two Danbury? A. Yes, the two Danbury.

Q. And you went to that convention—you went? You attended it? A. Yes, sir.

Q. Mr. Beach asked you if you had been in a committee, and you said no? A. Yes, sir.

7109 Q. But you went there and attended in person, and as a representative of all the members of the State Federation of Labor did you not? A. Yes, sir.

Q. Now the other two gentlemen that attended with you who were members of the United Hatters were Mr. Lee, William F. Lee of Bethel? A. Yes.

Q. And Mr. Martin Lawlor? A. Yes, sir.

Q. Also of Bethel? The other defendant? A. Yes, sir.

Q. I want to call your attention to certain portions of the reports of the proceedings of that convention; first
7110 from the Secretary's report on page 33: "Boycotts. The discrimination of Trade Unionists and their sympathizers against non-union product has resulted in unionizing many establishments and proved of great assistance to national unions in their efforts to organize their crafts. The efficient service rendered by the central bodies affiliated with the American Federation of Labor, and many that are not, deserve the very highest commendation. The following is a condensed report culled from the report received from affiliated unions for the twelve months ending October 31." Now do you remember hearing the report of the
7111 Secretary read, or has that passed out of your memory? A. Why, I have no recollection of it, although I remember him making his report. I have no recollection of what it was.

Q. Yes, well now let me call your attention under the heading of "Hatters; Boycotts won 1; lost, none." And now do you know James Duncan, the Vice-President of the American Federation of Labor and one of the Executive Council? A. James Duncan.

Q. James Duncan? A. Yes.

Q. And do you remember his reading the report of
7112 the Executive Council when the report of Executive Council was called for? A. Yes, I remember it.

Q. You remember his reading it? A. Yes.

Q. Now I want to call your attention to a portion of that report found on page 55, second column, as follows: "To aid our fellow workers of the District of Columbia who were indicted for conspiracy under the so-called Anti-Trust Law, we issued an appeal which brought a very fair return. The case have not yet been tried, and much interest has been evoked as to its out-

come, for it is the first case in which workingmen have been indicted under this provision of the law. The thought has long been entertained and expressed by us that the so-called Anti Trust Law, which was enacted presumably to control the great combinations of capital of the country, would at some time, and is now being sought to cover cases never contemplated by those who demanded its enactment. It is evident that we shall require an amendment to the law, by which its provisions shall not be applicable to working men engaged in any dispute for the protection or the betterment of their condition. And it also teaches the lesson that extreme care should be exercised regarding new proposals presumably to curb the powers of combinations of capital, when in truth they are cunningly devised to strike a blow at the organizations of labor. It is with a very great deal of pleasure that we report through the instrumentality of the several members of our council large victories were gained in the interest of our organization. Many disputes were adjusted, union establishments and conditions enforced, and in frequent cases the adoption by the employers of the union label. **7113** **7114**

We beg to report that the following firms which have been placed on our unfair list, have through the efforts of our movement become unionized, and therefore removed and placed upon our fair list." **7115**

Here follows perhaps twenty five or thirty cases. "Many houses which were unfair have been removed from the unfair list by reason of their concession of better conditions or freer opportunities to organize. These by no means refer to disputes adjusted and successes achieved with the large number of employees, but who were not placed on our unfair list.

"The following firms have, after due investigation and effort at adjustment been placed upon our unfair list." **7116**

Then follows a list of perhaps some seventy five. Then follows the unfair list of the American Federation of Labor, taking up nearly two columns of this very fine print.

Now, Mr. Shalvoy, did you say that you were not a member of the American Federation of Labor? A. I suppose that I would be under those conditions; I think in

7117 that complaint, or that answer to the complaint referred to the hatters, The United Hatters. As I said in the first place, I have no recollection of just what it was, but I remember Mr. Duncan making the report.

Q. Well, it isn't necessary for me to ask you as to the conclusions to be drawn fron that fact as to what is in that report. That will be left for argument. Now, Mr. Shalvoy, how long have you been interested in the labor movement? A. What do you mean; how long I have been a member of the hatters?

7118 Q. Well, how long have you been a member of the union? A. About 33—32 or '3 years.

Q. Well, that would carry it back beyond the birth of the American Federation of Labor? A. Yes, sir.

Q. That was started in 1881, we allege, and it is so in testimony. Now have you been aware of the existence of that body for a good many years? A. Yes, sir.

Q. And were you a member of the United Hatters at the time that they applied for and received a certificate of affiliation from the American Federation of Labor? A. Yes, sir.

7119 Q. My associate asked me to ask you when that application was made; was it after the convention of 1896 in March? A. It was after the 1896 Convention; I couldn't say how long.

Q. Did the Convention decide to make the application? A. I don't think so.

Q. You don't remember about that? A. No.

Q. The proceedings will show? A. The record will show.

Q. Well, now, the constitution of the United Hatters provides for the mode of the election of the delegates who are to represent that body in the American

7120 Federation of Labor Convention, does it not? A. Yes, sir.

Q. And, briefly, isn't this the procedure: The secretary of the national organization sends to the secretary of each local a notice to send in the names of nominees to be later voted upon by the members enmasse by referendum vote? A. Yes, sir.

Q. Those are required to be voted upon by the members of each local at meetings specially called for

that purpose, are they not? A. No, not specially called for that purpose. 7121

Q. Well, at a meeting? A. At a meeting.

Q. It must not be at a meeting held at any shop? A. No.

Q. They have it at the regular meeting place? A. Regular meeting place.

Q. And notice must be given, must it not, that nominations are to be made? A. No, there is nothing obligatory about making this, although it is the usual custom.

Q. Well, it is the invariable custom, isn't it? A. It is with us; I don't know about others. 7122

Q. Well, we will confine it to yours; then these nominations are sent by your local to Mr. Lawlor, now secretary, and previously to Mr. Phillips? A. Yes.

Q. And the list thus nominated by each of the unions is again sent around to the members who at a proper meeting have an opportunity to vote and are expected to vote as to who shall be the delegates? A. Yes.

Q. To which you are entitled. And that is determined by the vote of the entire body, isn't it? A. Yes, sir.

Q. Now, as secretary of this body, and interested in the labor movement, and in the Federation of Labor, did you ever see the constitution of the American Federation of Labor? A. Yes, I have seen it. 7123

Q. Have you received copies of the proceedings of the American Federation of Labor? A. Yes, sir.

Q. And did you have forwarded to you as delegate to the convention of 1898 the proceedings of the Convention of 1897 and after the convention was held in 1898 did you receive a copy of the proceedings? A. I received a copy of the proceedings of 1898. I don't remember receiving any in 1897. 7124

Q. Every delegate is entitled to and does receive a copy from the Secretary, does he not? A. Yes, sir.

Q. Now I want to call your attention to certain provisions of the Constitution of the American Federation of Labor. First to Article 3 in regard to the Convention. I read now from the constitution then in force. "Article III Conventions The following committees consisting of five members each shall be appointed by the President": "Eighth" passing the others "Labels and boycotts." Now

7125 you knew that they had a committee on Boycotts, did you not? A. Yes, sir.

Q. Coming now to the officers of the American Federation of Labor "Article V. Sec. 1.—" no. "Article VI. Sec. 1. Duties of President. It shall be the duty of the President to preside at the Annual Convention; to exercise supervision of the federation throughout its jurisdiction." Did you know that was in there? A. No, I didn't.

Q. Well, you read the constitution? A. I read parts of it. I wouldn't say that I read it all. I don't think that

7126 I ever read it all.

Q. Now coming down to the duties of Secretary, Sec. 3 "He shall publish a financial report monthly in the American Federationist and send one copy to each affiliated body, and such additional number of copies as may be ordered and paid for by any organization connected with the federation." And now I come to the Executive Council, a portion of whose report I have just read to you "Aritcle IX Executive Council, Secs. IV and V. The Executive Council shall also prepare and present to the Convention in printed form a concise statement of the de-

7127 tails leading up to approved and pending boycotts." Did you know that was in there? A. No, I didn't.

Q. Sec. V, passing the others "While we recognize the right of each trade to manage its own affairs, it shall be the duty of the Executive Council to secure the unification of all labor organizations so far as to assist each other in any trade dispute." If you read the constitution, why, you must have read that? A. I probably read that.

Q. You are Secretary of the Danbury Finishers' Union, is that it? A. Yes, sir.

Q. Finishers' Union of Danbury; are you the cus-

7128 todian of its archives? A. Yes, sir.

Q. Now when did your union become affiliated to the State Federation of Labor of Connecticut; have you got a certificate of affiliation, as you now recall? A. I don't think that we ever got a certificate.

Q. You haven't got it? A. We become affiliated on an application.

Q. Well, didn't you receive some certificate from somebody? A. Not that I ever remember. If they have, I haven't seen it.

Q. Have you ever had one from the Federation of Labor to the Executive Council? A. No, sir. I might explain that our association is a local association. The National Association, the United Hatters of North America, may have a certificate. 7129

Q. I will direct your attention now to certain other provisions in this wonderfully complex constitution of the American Federation of Labor, which is the law by which you are all bound: "Article XIII, Miscellaneous, Sec. 1 Certificates of affiliation shall be granted by the President of the Federation by and with the consent of the Executive Council, to all national and international unions and local bodies affiliated with this federation." That is the document which has been introduced in evidence. So far as the aggregated body, the United Hatters is concerned? A. That does not refer to locals affiliated with the national union. 7130

Q. Now I want to call your attention to "Section V. Certificates of affiliation shall not be granted by State Federations of Labor. That power is vested solely in the Executive Council of the American Federation of Labor and the Executive Officers of national and international unions affiliated therewith." Now do you know what that refers to? A. The certificate you mean? 7131

Q. That prohibition on the State Federation of Labor granting certificates of affiliation? A. It refers as I understand it—I don't know as I understand it correctly, but as I understand it it refers to local unions or federated unions affiliated directly with the American Federation of Labor.

Q. And not to the locals that are affiliated to the International Union; it appears to be doubtful, and I want to clear it by an expert; the certificates of affiliation which the State Federation is prohibited from granting does not apply to unions situated as the Hat Finishers' Local of Danbury? A. No, sir. 7132

Q. Now, while I am at it, I want to call your attention to another statement in this complaint, within say five years after the suit was brought; after it has been to the Supreme Court and that Court sends it back here. Commence with Paragraph IX. "The individual defendants named in this writ are all members of a combination or association of persons styling themselves the

7133 United Hatters of North America, and said combination includes more than 9,000 persons residing in the several states of Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Indiana, Illinois, Missouri, California and in the Province of Ontario in the Dominion of Canada. Said combination is subdivided into twenty sub-combinations, each of which is by themselves styled a local union of the United Hatters of North America. Six of said sub-combinations are in the State of Connecticut and known as local" so and so "and have an aggregate membership of more than three thousand persons residing
7134 in the State of Connecticut." Then in Paragraph 10 follows the statement that they own, control, edit, publish and issue a paper styled the Journal of The United Hatters of North America, which is a ready instrument for the dissemination of information to its members and the public as to boycotts declared and pushed by them, and of the acts and measures of its members and agents for carrying such boycotts into effect, and was so used by them in connection with the acts of the defendants hereinafter set forth." Then follows the one in regard to the ownership of the label. Now in your answer, which makes the
7135 issues here which we have got to put before the jury "As to Paragraph 9, this defendant admits that he was at the date of the writ in this action a member of a local Hat Finishers' Union, living in Danbury, Conn., and denies that said union is connected (except in the manner herein set forth) with the so-called National Organization known as the United Hatters of North America; and denies that he has any other membership or participation in said national organization known as the United Hatters of North America except that he in common with members of said Danbury Hat Finishers' Union is entitled once in every
7136 four years to vote for a delegate or delegates to a convention, which as this defendant is informed and believes and therefore alleges elects a board of directors of said United Hatters of North America for the term of four years, or until their successors are elected; and this defendant expressly denies any influence or authority, or control over said United Hatters of North America or any of the said alleged twenty sub-combinations referred to in Paragraph 9 of said complaint, except that he admits that he is a member of said local union.

"And this defendant further denies that the said United Hatters of North America is a combination or association of persons otherwise than in the sense that said United Hatters of North America consists of a Board of Directors elected every four years by a convention of delegates which meets for a few days and then is dissolved. 7137

"And as to Paragraph 10 this defendant denies that there is any combination of persons collectively known as the United Hatters of North America, except as hereinafter and hereinbefore admitted; and admits that the board of directors of said United Hatters of North America published a Journal of the United Hatters of North America. All the rest of said paragraph is denied. 7138

"As to paragraph 11 this defendant admits that the United Hatters of North America, as the same is above described, owns and controls a union label which is used to indicate that the hats to which it is affixed are union made hats, and that said label is legally registered under the law. All the rest of said Paragraph is denied."

Now, Mr. Shalvoy, do you say that you are not a member of the United Hatters of North America? A. I am not a direct member, no—a member directly. I am affiliated with the United Hatters. 7139

By the Court:

Q. Is there any other person more directly a member than you? A. Yes, we have Boards of Directors.

Q. Well, aside from the directors? A. No.—the directors and the officers. We consider that the Board of Directors and National Officers are the United Hatters of North America between Conventions; and the different locals are affiliated with them.

Q. Let me call the witness's attention to a few things here: "Title. This association shall be known as the United Hatters of North America," that is Article I. "Article IV. Sec. 1. Meetings. Regular sessions of this association shall be held every three years." Now delegates attend at these conventions representing all the membership, don't they? A. Yes, sir. 7140

Q. And when they are assembled together in the convention, every member is thereby proxy, isn't he? A. He is there as a delegate representing his local union.

7141 The Court:

Let me ask, is there any question in this case but what that association was an association controlled by delegated authority and delegated from the membership?

Mr. Beach:

Not at all. Not the slightest.

The jury will be told that the power of this association vests in the individual members in it as the Court understand it.

Mr. Mulholland:

7142 I think the Court is right.

Mr. Davenport:

That is all.

RE-DIRECT EXAMINATION

By Mr. Mulholland:

Q. You attended one convention of the American Federation of Labor? A. Up to 1903, that is all.

Q. And you say you have never read the entire constitution through? A. Yes, sir.

7143 Q. You have read it through? A. I have not.

Q. Well, Mr. Davenport was asking you, as an expert, upon the law of the American Federation of Labor. Do you pose as an expert upon that question? A. No, sir.

Q. Now you were questioned somewhat at length about your membership in the American Federation of Labor; let me see if this is correct; you are a member of a local hatters which is associated with an international association of hatters, which is affiliated with the American

7144 Federation of Labor; is that correct? A. That is correct, yes, sir.

Q. Mr Shalvoy, I wish you would explain to the jury what you meant a little while ago when you spoke about fines, etc. You said something about upon a vote of the trade. To what did you refer by the trade? A. The association.

Q. Now which association? A. The different local associations.

Q. What do you refer to when you say the vote of the trade? A. The local association; our local association. 7145

Q. Only the association of Finishers? A. Yes, sir.

Q. Well, then, you said that no fine could be levied against any man who refused to come out of Mr. Loewe's until there had been a vote of the association? A. Yes, sir.

Q. Now what association would have an opportunity of voting on that question? A. So far as we were concerned, the Danbury Hat Finishers' Association.

Q. Then you referred to a meeting that you were cross questioned about at length as a shop meeting? A. Yes, sir. 7146

Q. Now what did you mean by that? A. A meeting of the men simply employed in a particular factory.

Q. Then this meeting was a meeting of the men employed only in Mr. Loewe's factory? A. That is all.

Q. And that you call a shop meeting? A. Yes, sir.

Q. And that then, was not a meeting of the association, as defined by you? A. No, sir.

Witness excused.

Witness, 7147

PATRICK H. CONNOLLEY,

Sworn by Mr. Carroll.

EXAMINED

By Mr. Beach:

Q. Your full name, Mr. Connolley? A. Patrick H.

Q. Where do you live? A. Danbury, Conn.

Q. Are you one of the defendants? A. Yes, sir.

Q. Which branch of the trade do you belong to? A. Hat Makers. 7148

Q. Are you an officer of that local association in Danbury? A. I was.

Q. And during what years did you hold office? A. From 1894 up until July of 1911.

Q. What office did you hold there prior to October, 1903? A. Secretary.

Q. Now, have you attended the conventions of the United Hatters of North America? A. Yes.

7149 Q. Which ones, I mean up to and including that of 1903? A. I believe all, with the exception of 1907.

Q. Well then, all of them up to and including 1903? A. Yes.

Q. Did you ever attend any of the Conventions of the American Federation of Labor? A. One.

Q. Which one was that? A. 1900 at Louisville.

Q. How long have you been a member of the Hat Finishers' Association of Danbury? A. Hat Makers.

Q. Of the Hat Makers' Association of Danbury? A. Since Jan. 2d, 1886.

7150 Q. Well, state the circumstances very briefly under which you joined that? A. I started to learn hat making in 1885; a consolidation was brought about, or arrangements for a consolidation were brought about in that year, and in January of 1886—

Q. A consolidation, Mr. Connolley between what? A. Between the hat manufacturers of Danbury and the journeymen. There was an organization of finishers, hat finishers and hat makers in Danbury at that time, but very small; I should say ninety per cent. of the men working in Danbury were not members of the organization, as

7151 all of the factories in Danbury at that time were open or independent shops with the exception of Henry Crofut's. The manufacturers conceived some sort of an idea in their heads that it would be a good idea to unionize all of their plants and all of their employees, and that was brought about, and on January 2nd, 1886, I was forced to take a card in a union or else leave the factory I was employed in at that time, John W. Green's. I believe the bringing about of that consolidation consisted of Mr. Merritt and Mr. Tweedy, Mr. Beckerlee and Mr. Loewe, and others that brought about that consolidation.

7152 Q. Now, going back to your duties as Secretary of the Hat Makers' Association, did you keep any books? A. I did, yes.

Q. What were they? A. The membership of the local organization and the dues they paid, also the minute books of the meetings of the organization.

Q. Are those in your custody, and those books now? A. The present Secretary, Mr. John O'Hara.

Q. He testified here, I believe, and brought the books as Secretary of the Hat Makers' Association of

Danbury. Did you receive copies of the Journals of the United Hatters? A. I did. 7153

Q. In the first place, what, approximately, was the membership of your organization in Danbury in the year 1900 to 1903, inclusive? A. I should say between one thousand and fourteen hundred members; somewhere in that neighborhood; that is including Danbury, New Milford and Newburgh, which came under the jurisdiction of the Danbury Makers' Association.

Q. You received every month some copies of the Journal of the United Hatters? A. Yes.

Q. About how many? A. About four hundred copies. 7154

Q. What did you do with them? A. I, as a rule, sent two hundred of those copies to Newburgh. We had between a hundred and eighty and two hundred and twenty men to work in the Newburgh factory, and they were anxious for the Journal of the United Hatters of North America. I always took two hundred of those copies and expressed them to Newburgh, the balance, two hundred, remained in my office. On some occasion I have told the stewards that there were journals there and they could take them to the shop, but the stewards refused to take the journals to the shops, claiming that that was not part of their duties. They were to collect dues, etc., and didn't feel that they wanted to carry these over, but that if the men wanted them they could come there for the Journals. As a rule, they were left there in the office and anybody who wanted them could take them. 7155

Q. Did any of the stewards take them and distribute them in the shops? A. I couldn't say positively that they did. I don't remember of any stewards carrying them out from there. Probably he would take one for himself, but I am not positive that he took them to the factory. 7156

Q. What would you say, Mr. Connolley, did become of the copies of the Journal? A. Well, I know many times they accumulated there, and there was such a large volume of them in the office that I, as a rule, gave them to the bootblack, and he sold them for paper.

7157 Mr. Merritt:

May I ask, Mr. Beach, if you dispute the fact that these journals were distributed in most of the factories at that time?

Mr. Beach:

No, I am trying to get at it now and show how many of them were distributed.

Mr. Merritt:

The reason I raised this question was that a lot of defendants were not examined, as I understood the testimony of most of the defendants who came here they
7158 saw these in the factory from time to time where they worked.

Mr. Beach:

I suppose the fact to be that some of the journals were put into all of the factories at some time. That is what I suppose the fact to be.

Mr. Merritt:

All right.

Q. You say you sent half of them away to Newburgh regularly? A. Yes.

7159 Q. And what percentage of the other bunch did you say accumulated in your office and were subsequently sold for old paper? A. Seventy-five to eighty per cent. of them remained in the office.

Q. Now you received also convention reports from time to time? A. Yes, sir.

Q. What became of them, what did you do with them? A. Why, we didn't receive as many copies of the Convention reports as we did of the Journal. We possibly might get two hundred copies of the Convention Report. I wouldn't say that we got that many; and I sent a
7160 part of those to Newburg and the balance remained in the office. They were heavier, larger book, probably an inch or an inch and a half thick.

Q. Well, who takes care of them? A. Anybody who wanted one of them could get it by coming to the office. I never sent them to the factory.

Q. How about the American Federationist, what do you know about that? A. I received one copy of that as Secretary of the Connecticut Federation of Labor.

Q. When were you Secretary of the Connecticut Federation of Labor, Mr. Connolley? A. I was secretary

of the Connecticut Federation of Labor for I think four- 7161
teen years past until September of 1911.

Q. Well, was any copy of the American Federationist sent to the office of the Hat Makers' Association of Danbury? A. Well, it was sent to me at that office; that was my address; it came to me at my address; that was my office.

Q. One copy? A. One copy is mailed to me as I was on the mailing list of the American Federation of Labor, on account of being Secretary Treasurer of the Connecticut Federation of Labor.

Q. Now, Mr. Connolley, you were present at the 7162
convention of the United Hatters of North America for the year 1900? A. I was.

Q. Do you remember whether you were on any committee then or not? Have you got the record here so that I can refer to it? I don't want to waste any time. The convention of the United Hatters for 1900. I don't want to waste any time as to whether he was or not on a committee. It will be here in the record, Mr. Connolley? A. Yes.

Q. Whatever the record says? A. Whatever the 1
record says about what committee I acted on is so. 7163

Q. And you heard the President's report at that convention? A. I did.

Q. And took part in whatever action was taken by the convention on that report? A. Yes.

Q. And voted for the re-election of officers? A. Yes.

Q. Then I will ask you the same question as to the convention of 1903? A. Yes.

Q. Now how about this convention of the American Federation of Labor for 1900, were you on any committee 2
there? A. Committee on labels. 7164

Q. And there has been in evidence here a resolution which was introduced in the Convention of the American Federation of Labor, and is found on page 105 of the 1900 convention proceedings of the American Federation of Labor:

"Whereas the Hat Factory of James Marshall, of Fall River, Massachusetts, is known to be the foulest factory in this country, and has done more to injure the United Hatters of North America than all of the other

7165 foul factories by substituting foreign women to do the work of men in the manufacture of hats, and whereas the authorities in Washington, D. C., have for the past three years seen fit to place all orders for hats to be worn by United States soldiers with the said foul factories of James Marshall of Fall River, Mass., despite the protests and entreaties of the United Hatters of North America, therefore, be it resolved that the American Federation of Labor in Convention assembled disapprove of the course pursued by the authorities in Washington in the placing of
7166 the orders for Army hats with James Marshall of Fall River, and we emphatically protest against the placing of future army orders for hats with said, or any other non-union concern; further resolved that the incoming Executive Council be instructed to insist on having the Government orders for Army hats placed in a union factory, and they bear the union label of the United Hatters of North America." Did you introduce that resolution? A. Mr. Maher and myself introduced it; Mr. Maher's name is attached to it.

Q. You were there with Mr. Maher? A. Yes.

The Court:

7167 Does the record show who signed the resolution?

Mr. Beach:

I don't remember. The witness says that he and Mr. Maher were responsible.

Witness:

Yes.

Q. Do you remember what was done with that resolution? A. Yes; it was referred to the Committee on Resolutions. The Committee on Resolutions in their report recommended that it be referred to the incoming
7168 general executive board. Mr. Maher and myself opposed it, feeling that if it was referred to the incoming general executive board that that was the end of it. That was the idea that prevailed in the American Federation of Labor.

The Court:

Can't you cut that short?

Q. Yes. Won't you tell what was done with it? A. The word "insist" was taken out, and that "they shall use their best endeavors to have the label placed in the

Army hats in the future" and under those conditions it was adopted. 7169

Mr. Merritt:

Didn't go to the Executive Council? A. Why it went to the Executive Council to carry out the adoption of the resolution.

Mr. Merritt:

But it was adopted by the Convention? A. I believe so.

By Mr. Beach:

Q. What led up to the introduction of that resolution? A. What caused me to introduce the resolution was at the time of the Spanish-American War we had a company in Danbury composed entirely of the trade, or of hatters. 7170

The Court:

Well, that was the purpose of the resolution?

Witness:

The purpose of the resolution was to have the army hat bear the union label, and have it made in a union shop; that was the purpose of the resolution; but what brought it more forcibly to my attention was the fact that union hatters wore a hat that didn't contain the union label going out in the Spanish-American War, and they didn't desire to go out that way again if possibly they were called upon again. They thought they ought to wear a hat containing the union label if they were members of that organization. 7171

Q. Now, do you know anything about—I am asking him now about a few firms that were mentioned in the complaint. I really don't know whether we ought to go into that subject or not, but what he has to say will be very brief on it. Did you know J. B. Allen of San Francisco? A. Yes. 7172

Q. Whether or not he was a member of the Hat Finishers of Danbury? A. Yes, he was. Started what we call a buckeye in San Francisco.

Q. How many men did he employ, do you know? A. I shouldn't say over two men at any time.

Q. Did you know Louis Boselli of Pattison? A. Yes. He was a member of the Hat Finishers of Danbury, and started the same sort of a shop in Pattison, N. J. Finishers' Department, we called them.

7173 Q. Did you know Penfield & Griffin of Bridgeport? A. I knew Griffin—not Penfield. Griffin was also a member of the Hat Finishers of Danbury and went into a small shop, finisher, in Bridgeport; had just went in business.

Q. That was an open, a fair factory? A. Yes, he was a fair man himself.

Mr. Davenport:

This is all taken from the complaint.

The Court:

7174 There is no evidence, as I remember it, offered by the plaintiff, except that statement, was there?

Mr. Davenport:

No, your Honor. And let me suggest this. Immediately following that allegation in the complaint is a statement that they published such statements as that broadcast for the purpose of intimidating other dealers.

The Court:

My view of that is that it wouldn't make any difference whether that statement was true in fact or not, so far as the declaration is concerned. The allegation is to the effect that it was so published and circulated, as I 7175 understand it, at least that is the only force there is in it.

Mr. Davenport:

That was the scope of it.

The Court:

I deem it as immaterial, whether it was absolutely true or not.

Mr. Beach:

Now then, I would like to have the Court turn back to the beginning of that Paragraph 17, Folio 35: "The defendants and the other members of said United Hatters of North America acting with them and in pursuance of 7176 said general combined scheme and purpose and in carrying the same into effect against said manufacturers, including the plaintiffs, and by use of the means above stated and the fear thereof, have within a very few years forced the following named manufacturers of hats in the United States to yield to their demands, and unionize their factories, to wit:"

Now I would like to inquire whether it is conceded that no evidence has been offered by the plaintiffs as to the truth of that branch of this paragraph?

Mr. Davenport:

Other than that report of the officers which was adopted by the convention and approved of. 7177

The Court:

I so understand it.

Mr. Beach:

Your case stands on that, so far as that proposition is concerned.

Mr. Davenport:

Yes, unless it is attacked in some way.

Mr. Beach:

Then I will leave it so far as this witness is concerned until I have had an opportunity of conferring in regard to it. 7178

Q. Now, Mr. Connolley, I want to take up the subject of what is called fines that has been spoken of at various times here in the course of this trial; in the first place do you know where that word "fine" comes from, as used in the hatters' parlance? A. No, it was in vogue when I came into the organization, and dates back of my time.

Q. And similarly the words fair and foul; were those words in use in the organization when you came into it? A. Yes, they were. 7179

Q. Now in order to bring the thing to a correct position, I will ask you in the first place whether or not the hat makers association of Danbury prior to October, 1903, had adopted any vote or resolution closing the factory of D. E. Loewe & Co. to union men? A. No, it hadn't.

Q. What authority other than the Makers' Association of Danbury had the right as a matter of laws and regulations of the association and of the United Hatters of North America to determnie whether that factory or any other factory in Dnabury should or should not be closed to union men? A. The Hat Finishers could close their department to union or non-union men. 7180

Q. And the Hat Makers could close their department? A. Yes.

Q. Now what I want to know is whether there was any other authority in the local association or in the United Hatters of North America which had the power to close a factory to union men? A. No, local associations

7181 act upon these things themselves in open or closed factory to their members in their locality.

Q. Suppose now, in the first place, that a factory has been closed by a proper order of the local association, what is the effect of that vote as regards the members of the association working in the factory? Not what the theory was; the actual practice? A. Why, if the local association should take a vote to close the Making Department, all makers holding cards of membership would be supposed to leave that factory; if they didn't leave the factory they lost their membership in the organization.

7182 The Court:

Well, the question was about the fine. Where as a matter of practice does the fining come in if they refuse to leave? A. If the member ever desired again to come back in the organization, and made application to the organization to take him back, they then would possibly place a fine on him.

The Court:

At that time? A. At such time as he applied to come back in.

The Court:

7183 And for such amount as they saw fit? A. As they saw fit.

Q. What I want to get at, Mr. Connolley, is the fact, if it is a fact, that these fines are levied when the men go foul, if that is the proper word? A. That is the word.

Q. If after going foul they apply to come back again? A. When they want to become fair.

Q. Who levies that fine in the first instance? A. The local association.

Q. And there are provisions in the constitutions of these various organizations whereby a member so fined

7184 can appeal? A. If he thinks he has been fined excessively he can appeal to the next meeting of the same organization that fined him, and if he feels that he has not been dealt with fairly at that meeting then he can appeal to the Board of Directors and to the Convention of the United Hatters of North America.

Q. And in the meantime, as a condition of appeal, does he have to pay his fine? A. No.

Q. Deposit it? A. No.

Q. I thought he did in some instances? A. No, in some cases they had paid a part of it and taken an appeal; in some cases they had paid all of it and received part of it back from an appeal. 7185

Q. But as you understand the practice was not required? A. Well, we have men in Danbury in the organization that have been fined three years ago and haven't paid it yet. Their appeal is still pending to the National Association, and they haven't paid a cent of it, and they are still working.

Mr. Beach:

I think that is all, Mr. Connolley. 7186

CROSS EXAMINATION

By Mr. Merritt:

Q. Did you state that you didn't follow the same practice in distributing the Convention proceedings that you did in distributing the Journal? A. I don't think I stated any different.

Q. I thought you did? A. I said I didn't receive so many.

The Court: 7187

I understood him to say that he had more of one than of the other.

Q. But the same procedure was followed in regard to the distribution of them? A. The same.

Q. Any man can become a member of your organization without the consent of the General Executive Board, can he? A. No man can become a member of our organization unless he receives the approval of the Local Association. He first applies to the local association and the General Executive Board has nothing whatever to do with it. 7188

Q. At no time? A. Not that I ever heard of. Men apply directly to the local association and their application is referred to the Board of Directors.

Q. The Board of Directors then pass upon it? A. Yes, if they are approved of.

Q. And no man can become a member unless the Board of Directors approve his application? A. The Board of Directors grant the card. The approval is by the Local Association.

7189 Q. Haven't the Board of Directors authority or power to refuse to grant that? A. Oh, yes, they have to grant the cards.

Q. Then they have the right to approve or reject it? A. They have the right to reject or accept the application and grant the card.

Q. Now when it comes to a question of fine levied on the same rule does or doesn't the Board of Directors have the right to pass upon the matter an an appeal? A. On an appeal, yes.

7190 Q. Now when you testified that fines were not paid that were levied and an appeal could be taken without payment of fines, was that the case in 1902 and '03? A. I believe so, yes.

Q. And you have never known of a case where the organization has insisted upon the payment of a fine before the appeal was taken? A. Not in my organization, no.

Q. Not in your organization? A. No; the Hat Makers, no.

Q. As a matter of fact, that is the rule of the organization, isn't it? A. What is that.

7191 Q. That the fine shall be paid first and then an appeal taken afterwards? A. No, it is not the rule of the Hat Makers' Association.

Q. The practice you mean? A. Yes, it hasn't been the practice.

Q. All the members of the locals are bound by the constitution of the United Hatters, are they not? A. Yes.

Q. And if any man violates any of the rules of that constitution, he is open to a fine, is he not? A. He is open to such penalty as they see fit to impose upon him. It may be a fine and it may be dismissal from the organization.

7192 Q. He may be fined, or dismissed, as the proper authorities may determine? A. Yes, or reprimanded.

Q. As the proper authorities may determine? A. Yes.

Q. So that if the National Officers should have power to call men out of the shop and the men should refuse to come out, then those men would be subject to a fine, or dismissal, or reprimand, would they not? A. I should say yes, if the national officers called them out of the factory: yes.

Q. Then you don't mean that your local association are the only power to close a man's factory to men? A. No, if it is a national affair the national association would take hold of the factory. I presume they would have a right to close it. 7193

Q. Yes, and have a right to impose fines upon people who disobeyed their orders?

The Court:

That is what he says.

Q. All right, and you know that your national officers are especially endowed with authority, and, in fact, it is their duty to use all means in their power to unionize factories, do you not? A. Yes. 7194

Q. So that when they call men out of a factory with a view to unionizing the factory they are acting within their authority, are they not? A. Yes.

The Court:

Well, that is what he said.

Witness:

Yes.

Q. Now you testified, didn't you, that the Loewe matter was a national affair, and not a local affair? A. Yes. 7195

Q. So that it wouldn't require any meeting of locals? A. No.

Q. To subject any of these men to fines. It was for the National to determine that matter, was it not? A. Well, if that matter ever came into it, I presume they would determine it, yes.

Q. Now, it is a matter of fact that fines of very large amounts have been levied upon members who violated the rules of the organization, is it not? A. In some cases yes.

Q. How large have those fines been? A. Why, one was within one penny of being a thousand dollars. 7196

Q. Then it was $999.99? A. Yes, but it was reduced afterwards by the Board of Directors to $300. It wasn't put on with any idea of collecting. It was a prohibitory—what we call a prohibitory fine. That is they prefer that the man shall stay outside of the organization.

Q. And that would mean he had gone foul, wouldn't it? A. Yes.

7197 Q. Worked in a factory that was foul? A. A foul shop, yes.

Q. After the concern of E. A. Mallory & Sons was unionized you collected quite a large amount of fines, didn't you? A. Yes, we did.

Q. They ran up to what amount? A. $200.00 was the highest.

Q. He was in your organization? A. Yes.

Q. You don't know what it was in the Finishers'? A. No, I wouldn't testify what it was there. From twenty-five to two hundred dollars.

7198 Q. And were these fines in each instance laid upon men who had gone foul? A. Some were men who had gone foul. The two hundred dollar man had gone foul, yes; in 1893 and '4. The twenty-five dollar men, some of them, never held a card and were admitted for twenty-five dollars to the time he wanted to come back; but there were others who had signed what they called an agreement put up by Mallory at that time that they would not be members of the union and working in his factory, and they were fined twenty-five dollars.

7199 Q. Now you don't mean to testify, do you, that the man who doesn't come out thereby forfeits—that a man who goes into a foul factory or refuses to come out of the factory which is closed thereby forfeits instantaneously membership, do you? A. Why, yes; he loses his membership the minute he stays in that factory.

Q. I see. And when it comes to the question of going back into membership the terms of re-application are entirely open to the discretion of the organization, aren't they? A. The local organization, yes.

Q. They may exclude him absolutely if they want? A. Yes.

7200 Q. And they may put any conditions upon membership which they want? A. Not any conditions; any price they may see fit to fine him they may put that on.

Q. I presume, Mr. Connolley, you take the position that whatever appears in the Journals, and whatever appears in the Convention Proceedings, you will stand by? A. Yes.

Q. You don't plead ignorance of them? A. No. I have read them and attended them.

Q. Now after this suit was started you went down 7201
to Washington to the headquarters of the American Federation of Labor, didn't you? A. Shortly after; yes, about the 22nd of September I went to Washington. That is I went there the 21st, the night of the 21st, I got there on the 22nd of September.

Q. And you met the Executive Council of the American Federation of Labor? A. I did that week. Not the next day after the day I got there, nor the following day. I think I was there three days before I saw the Executive Council of the American Federation of Labor.

Q. And you went there for the purpose of seeing 7202
them concerning this suit, did you not? A. Yes. Not this suit.

Q. The State suit only? A. The state court suit.

Q. That was the only one you went to see them about? A. That is all they were interested in, as I understood at that time.

The Court:

Both brought at the same time?

Mr. Merritt:

Yes, Your Honor.

Q. Didn't you also discuss the other suit, the Fed- 7203
eral Case? A. I didn't discuss either suit.

Q. Who was with you? A. Mr. Moffitt.

Q. Was he the only man from your organization? A. That is all.

Q. You mean by that that Mr. Moffitt did the talking? A. Yes.

Q. You were present and heard it? A. I went with Mr. Moffitt.

Q. You were present and heard the conference? A. Yes.

Q. And didn't the Federation at that time agree to 720
take an interest in these cases? A. No.

Q. Didn't give you any assurance of that kind at that time? A. No.

Q. None whatsoever? A. No.

Q. Do you remember Mr. Moffitt telegraphing to Danbury? A. Yes.

Q. Did he telegraph the Danbury News? A. He did, from the Postal Telegraph Office in Washington.

Q. Now let's see if this was that telegram, Mr. Con-

7205 nolley, in the Danbury News September 25th, 1903: "Will protect the hatters. Federation of Labor offers full extent of resources in defending Loewe suits. Secretary Connolley of the Danbury Hat Makers' Association is in Washington, D. C., with other officers of the United Hatters of North America in consultation with the Executive Counsel of the American Federation of Labor. This consultation is in regard to suits brought against the two organizations by the firm of D. E. Loewe. A meeting was held yesterday, and another was held today. This afternoon the following telegram was received by the 7206 News from John A. Moffitt, President of the United Hatters of North America: 'At the morning session of the Executive Council of the American Federation of Labor it was decided to protect the United Hatters in the Courts and elsewhere to the full extent of the resources of the Federation and authorized President Gompers and Vice-President Duncan to take any action necessary in the premises.'" Is that the telegram, as far as you can recall it? A. That is the telegram, yes; but that wasn't the action of the Executive Council of the American Federation of Labor. There was no action on the part of the 7207 Executive Council. On the 24th, when Mr. Moffitt and I saw them, Mr. Moffitt and they discussed it, and we retired without any action whatsoever being taken and we went to a ball game in the afternoon, and in the evening John said he thought it would do the boys good and he sent it home to them; something like his reports.

Q. And you assented to it? A. Oh, sure; I wouldn't interfere with John sending home a telegram of that kind.

Q. The Executive Council began on the 21st? A. Yes.

7208 Q. You might have been at the first meeting? A. No, I tell you we were there on the 24th.

Q. You were there at the time Mr. Moffitt was there? A. We were in Washington; we arrived there on the morning of the 22nd and we were there until the 25th, and we saw the Executive Council but once, and that was, I think, on the 24th.

Q. You said Mr. Moffitt's reports were exaggerated? A. Yes.

Q. That is what I understood you to say? A. Yes, I believe so.

Q. And this is one of the cases? A. Yes. 7209

Q. This telegram. Now here is this from the minutes of the Executive Council of the American Federation of Labor, which show that this body at that time—A. What date?

Mr. Davenport:

21st to 25th.

That seems to be the record here. That would accord with your recollection all right, wouldn't it, as one of the days you were there? A. I was there from the 22nd to the 25th. I left there on the 25th. I was before the Executive Council but once, and I think I am almost 7210 positive that was the 24th. What issue of the Evening News does that come out in? A. That is in the 25th? A. Well, we sent it on the night of the 24th.

Q. I see: 'John A. Moffitt and P. H. Connolley, representatives of the United Hatters of North America, appeared in regard to suits for damages filed against the United Hatters of North America and the officers of the A. F. of L. by D. E. Loewe & Co. in the Federal Court for a hundred thousand dollars, and in the Connecticut Court for $240,000 against the United Hatters of North America—" 7211

Mr. Beach:

I meant to call your attention several times to the fact that you have got something wrong there. The suit in the Federal Court was the one for $240,000.

Mr. Merritt:

Well, I notice that is quite frequent in the articles: "The representatives of the United Hatters of North America stated that it might be wisdom on the part of the A. F. of L. to have an attorney present when the case was tried in the State Court, so that he would be familiar with and in position to protect the interests of the A. F. 7212 of L. It was ordered that the matter of securing counsel to protect the interests of A. F. of L. in the damage suit entered by D. E. Loewe & Co. of Danbury, Conn., be referred to President Gompers and Vice-President Duncan to take such action as occasion might warrant to protect the interests of the A. F. of L. and the executive officers thereof." Now is that the action that was taken, can you say? A. There was no action taken while I was there.

7213 Q. Then whatever action was taken was taken after you left? A. Yes.

Q. Did you go to the convention of the American Federation of Labor in 1903? A. No, only as a spectator —Boston.

Q. You went as a spectator? A. Yes, it was close by, and they very seldom come as close to Connecticut as that, and I went down to look on.

Q. Now I read the Executive Council's report in that Convention: "Recently a firm in Connecticut sued
7214 members of our United Hatters' Association of North America and associated us in a suit for damages to the amount of $340,000. The suit was brought both in the Federal and the Connecticut State Courts. We have taken such action as will protect our rights and interests, as well as being helpful in every way we can to our affiliated organizations." Now, didn't you know that the American Federation of Labor had taken action to help the United Hatters in this action? A. I can't see anything in that report that says they did.

Q. It says, as well as being helpful in every way we can to our affiliated organizations? A. I know that
7215 they haven't helped us. Not up until this trial, and that appeal was taken, and there is nothing in that report either that shows that any action was taken while I was there that they would do as Moffitt telegraphed to the News.

Q. Now, Mr. Connolley—

The Court:

Is this the man that sent out the letter?

The Witness:

Mr. Taylor and myself drew that, and I sent it out before any action was taken by the association, and no ac-
7216 tion that I know of has been taken by the association since; but I felt, and do feel yet, that the association would stand back of the case; stand back of the suit as it was through the membership in that organization, the United Hatters of North America, that these men were sued; owing to their membership in it. These men themselves would pay their proportionate share of it in case a judgment is rendered against us. Every member of the United Hatters of North America.

Mr. Davenport:

What is that? A. I would say that every member of the United Hatters of North America would pay his proportionate share of whatever was— 7217

Mr. Davenport:

Well, if it was $250,000 it would only be thirty dollars apiece, would it? A. I don't know how much it would be apiece, I have never gone into it as you have, Mr. Davenport. It might be more and it might be less.

Mr. Merritt:

Now let me see, the witness says that no action has been taken. On the last trial let me read you your testimony: "Will you state the facts concerning these communications." We didn't at the last trial know what these communications were. "A. I was in New York on the day that the attachments were served. I came to Danbury, I think it was Saturday"—"I was conducting a cigar business at that time on Main Street, and I had some bills to check out that day, and I intended to do it. I came in on the 10:40 train, I think, and I found after I arrived at Danbury that my account in the National Bank had been attached along with a number of those of these local finishers and makers unions of Danbury, and that evening Mr. Shalvoy, who was also attached, and I think Mr. Gallagher— Q. Peter Gallagher? A. Yes. And myself. I can't just remember whether the President of the Finishers went with us or not. Took steps to employ counsel. That was without consulting anybody but just the local officers. Q. Was that Mr. Taylor? A. Yes. We immediately went to see Mr. Taylor and employed him. I think about three weeks afterwards I sent out a communication to every hatter in Danbury and Bethel, through the mail made out something in this shape: that I hereby authorize P. H. Connolley to employ counsel to defend me in this case, and requested in a sort of brief way at the top of that that they sign their name to the part of the communication there empowering me to employ counsel to defend them, and it was perforated and they tore it off and enclosed it in a stamped envelope with my address to mail to me, and I think in nearly every case that they came back signed by the party it was sent to. Can I obtain one of those? A. I don't know but what Mr. Taylor could give them to you as I gave them to Mr. Taylor as I re- 7218 7219 7220

7221 ceived them. He was the counsel employed by me at that time. Q. Now you had some conference with the National Officers before you took this action, didn't you? A. No, but we afterwards, I think, visited the national officers."

Witness:

Yes.

"and I think they approved of the counsel that we procured and also gave me the right to procure further counsel. We did this at first on our own responsibility. I believe that the day we issued that we went to New
7222 York and saw the national officers."

I suppose the day you issued the circulars that means? A. Yes.

"Went to New York and saw the National Officers and they agreed to back us up in the move."

Witness:

Yes.

"and I think we so published it in the Danbury News that night that the United Hatters of North America had decided to defend or take up the case of their members who were being sued and defend them. Something to that
7223 effect was published in the paper that night."

A. That is the United Hatters' National Officers in New York I had visited.

Q. That is the Board of Directors? A. No, the national officers, were at that meeting. The four national officers; the General Executive Board.

Q. I mean the General Executive Board? A. Yes.

Q. Then the General Executive Board had ratified the entire section? A. Yes, ratified the entire action of the Danbury local officers.

7224 Q. And full power had been given the General Executive Board previously? A. Why by?

Q. By the Board of Directors? A. Oh, I know nothing about that.

Q. You know it by the Journal that the Board of Directors had delegated full authority to the General Executive Board to handle the Loewe matter? A. Oh yes, I saw it in the Journal.

Q. Then you knew didn't you that it was ratified by the General Executive Board? A. Yes.

Q. And you immediately notified the Danbury News so that it would be put in the News? A. No, I wrote a copy before I went to be put in the News. 7225

Q. Yes, but you notified the News, didn't you, that the United Hatters of North America had decided to defend it? A. Yes, sure.

Q. So that was done after the meeting? A. A copy was left there, a circular letter as sent out, to be left there and just as soon as the Board approved of it, to be published in the Danbury News.

Q. This action of the General Executive Board? A. We went down in the morning at 7:35 and as soon as the General Executive Board approved of this matter. 7226

Q. Then you intended that the Danbury News would go ahead and publish it? A. I had left a man in charge of the store who had the circular letter that we sent out in his charge to turn over to the News.

Q. That is immediately as soon as the General Executive Board had approved of it you made arrangements to have it published in the News? A. To have it published, yes.

Q. Your letter which you sent out was headed as from P. H. Connolley, Secretary, and the United Hatters of North America? A. Yes. 7227

Q. So that you were acting in the name of the organization? A. In the name of the United Hatters, yes. I was the local Secretary there, and handled that end of it.

The Court:

Recess until two o'clock.

Afternoon Session, Thursday, October 3rd, 1912.

EMIL FLOSKY

Sworn by the Clerk. 7228

EXAMINED

By Mr. Mulholland:

Q. Your name is Emil Flosky? A. Yes, sir.

Q. Where do you live, Mr. Flosky? A. Danbury, Conn.

Q. How long have you lived in Danbury? A. Since 1884, that is—

7229 Q. Well, that is near enough. You are a member of the hatters' union? A. Yes, sir.

Q. And of the Finishers' Department? A. Yes, sir.

Q. I understand that you worked for Mr. Loewe in 1902 at the time that the men went out on strike? A. I did.

Q. At that time how long had you been working for Mr. Loewe? A. Between 5 and 6 years.

Q. You are a defendant in this case? A. Yes, sir.

Q. And what is your age? A. 64.

7230 Q. Now, Mr. Flosky on the morning that you went to the meeting on White Street, I wish you would tell the jury just how you happened to go? A. Oh, we started to work, we come to the shop about 9 o'clock in the morning, and started to work, and a fellow jour, a finisher, come in and says we have to attend to a meeting at 9 o'clock at White Street.

Q. Did you go up to the meeting? A. Yes, sir.

Q. Who went with you? A. All the fair finishers.

Q. Do you know where that meeting was held, as to what street it was on? A. White street.

7231 Q. When you got into the hall who did you find there outside of the Journeymen besides the Journeymen? A. Mr. Barrett.

Q. Mr. Maher? A. Mr. Maher.

Q. Do you know Mr. Shalvoy? A. I know him.

Q. Was he there? A. I don't think so.

Q. You didn't see him? A. I didn't see him.

Q. What was the condition of the room? Whether there were chairs there or not, or whether you stood up? A. I guess there were some chairs there.

Q. Enough for everybody? A. Yes, I think so.

7232 Q. You think so. Now Mr. Flosky, after you left the Loewe plant that morning, when they told you there was to be a meeting upon White St. did you ever go back to Mr. Loewe's shop to work? A. No, sir.

Q. I understand you did go back to collect your pay? A. On the following Saturday.

Q. At that time did you talk with Mr. Loewe? A. No, sir, I did not.

Q. My impression is that Mr. Loewe has testified here that you told him his factory was all right, and that

he was all right and that it was a shame, and that you would all be back in a few days, or something to that effect? A. I never have talked with Mr. Loewe when I went out. I would say that Mr. Loewe is all right, I never deny that, but I never talked with him. 7233

Q. Did you say anything like that to him? A. No sir, I did not.

Q. Now at the time you attended this meeting on White Street, did anyone make a speech or talk to you? A. No, not that I know.

Q. Well, did you hear anyone making any remarks, addressing the crowd of men there? A. No, not so long as I was there in the hall. 7234

Q. Did you see Mr. Maher? A. Yes, sir.

Q. Did you hear him say anything? A. No, not that I can say.

Q. Well, what was done up there, Mr. Flosky, what happened at this meeting you attended on White Street? A. Mr. Barrett said a few words about unionizing the shop, but I didn't stay to the end of the meeting anyhow, it was so full.

Q. Where did you go from the meeting? A. I went home.

Q. I want to ask you whether or not Mr. Maher or Mr. Barrett or any other officers of the Hatters' organization, threatened you in any way to get you to come away from Mr. Loewe's plant? A. No, sir, never. 7235

Q. You say you heard Mr. Barrett talking about unionizing the shop? A. Yes, sir.

Q. Now immediately after you came away from the Loewe plant, or went away from the meeting, where did you go? A. Right straight home.

Q. How long did you stay in Danbury after that? A. A few days, I don't know exactly, three or four.

Q. Where did you go then? A. To New Jersey. 7236

Q. How long did you stay in New Jersey? A. In New Jersey the first time I stay there two years and a half, then went over to Yonkers, and then went over to Jersey again about 8 years, a little over 8 years.

Q. It was a little over 8 years before you went back to Danbury? A. Yes.

Q. You say you are defendant in this case? A. Yes, sir.

7237 Q. Your property attached? A. I am, yes.

Q. Prior to the time you came out of Mr. Loewe's plant, had you known that the officers or agents of your organization were boycotting or interfering with the sale of the goods of unfair manufacturers? A. No, sir.

Q. You understand what I mean by boycotting? A. I know, I understand you.

Q. Well, had you ever heard that they were conducting boycotts in states outside of Connecticut? A. I never did.

7238 Q. During the time that you were in New Jersey up to the time your property was attached in Dnabury, did you hear in any way that your officers and agents were boycotting the goods of Mr. Loewe? A. No, sir.

Q. Or following those goods into states other than Connecticut? A. No, sir, I have not.

Q. You signed the letter that Mr. Connelley sent you about employing the lawyer, did you? A. Yes, sir, I did.

CROSS EXAMINATION

By Mr. Merritt:

7239 Q. Mr. Flosky do you swear that you never heard or read at any time that the officers or directors or agents of the union were attempting to prevent the sale of any non-union goods? A. No, sir, I never did.

Q. You are willing to swear to that fact? A. Yes, sir.

Q. Now you understand the difference, don't you, between saying I don't remember ever hearing it, and saying positively I never did hear it; now what are you testifying? Absolutely that you never heard or read it, or that you now don't remember whether you heard so or not? A. That is, what I say, I don't remember.

7240 Q. You say you don't remember? A. I don't remember, I don't remember I ever heard it.

Q. You were a union man in 1902? A. Yes, sir.

Q. How long have you been a union man? A. Since 1885, '5 or '6.

Q. You had worked in Loewe's factory for about 6 years up to 1902? A. In Mr. Loewe's?

Q. Yes? A. Yes, sir, between 5 and 6 years.

Q. You had always been a union man when you worked there? A. Yes, sir.

Q. Now when you went down to this meeting on July 25th, who was there present at the meeting, were they makers and finishers, or just finishers? A. Just finishers. **7241**

Q. Do you know they were all finishers? A. Didn't see anybody else but finishers.

Q. You knew practically all the men that were present by sight? A. Yes, sure.

Q. And you knew all those men were finishers? A Yes.

Q. Then you are willing to swear there were no makers there when you were there? A. I didn't see any if there was makers there. **7242**

Q. Well if there had been a lot of them there you would have been apt to have seen them, wouldn't you? A. Yes, sir, I would have seen them.

Q. As I understand, you also state to the Court according to your recollection, there were chairs enough for everyone to sit down, or nearly so? A. Oh, yes, it was a meeting hall, they always got chairs there, plenty chairs, plenty of room to sit down.

Q. You didn't hear Mr. Maher make any remarks so far as you recall? A. I can't remember that. I never heard Mr. Maher speak. **7243**

Q. You don't remember hearing Mr. Maher speak at all? A. No, sir.

Q. But you think you heard Mr. Barrett speak? A. A few words, for I didn't stay very long, I didn't stay until the meeting was over.

Q. And your recollection is not very clear as to what happened at the time? A. I didn't took very much interest in that anyhow, and I wanted to go away from Danbury anyhow.

Q. You were told to attend the meeting by Ed. Donnelly, weren't you? A. Yes, sir. **7244**

Q. Ed Donnelly worked right near where you worked, didn't he? A. Yes, sir.

Q. What did Donnelly say to you? A. He says, "Say, Loskey, there is a meeting at 9 o'clock on White Street, we are to attend the meeting."

Q. What? A. "We should attend the meeting."

Q. Well, I have got your testimony here that he said to you "You have to attend a meeting?" A. Yes.

7245 Q. Now, up to that time you had never heard any talk about the unionizing of Mr. Loewe's factory? A. No, sir.

Q. And you had worked there for 5 or 6 years in the room with a large number of other men? A. Yes, sir.

Q. Talked with other men at times? A. Yes, sir.

Q. There was no talk so far as you know among the men in Mr. Loewe's factory concerning any trouble, or concerning unionizing the factory? A. No. Once in a while they would say it would be a good thing if the shop

7246 was fair, if it was unionized.

Q. You left the factory in June, 1901, for a little while, didn't you? A. Yes, sir, I did.

Q. Went down to Mr. Green's and worked? A. Yes, sir, I did.

Q. Mr. Green's was a union factory, wasn't it? A. Yes, sir.

Q. You didn't like it as well up to Mr. Green's as you did at Mr. Loewe's so you preferred to come back to Mr. Loewe's, is that true? A. Oh, I liked it very

7247 well at Mr. Green's, but it was so far away from my home, and it was more—it was about 20 minutes more walk to Mr. Green's than to Mr. Loewe's, and Fuchs, told me a couple of times, "Oh, come back, come back." And I went back to Loewe.

Q. You testified at the last trial, "You preferred Mr. Loewe's shop? (A) Yes, that is why I went back." The Witness:

No, it was more convenient to me.

Q. Now, you don't mean to testify that Mr. Loewe —you didn't have any conversation with Mr. Loewe? A. No, sir.

7248 Q. Well, now all you mean is, you don't remember, isn't it? A. No, I don't remember it. I remember very well I didn't have any conversation.

Q. You don't remember what happened at the meeting very well, do you? A. Oh, I didn't stay there very long, only stay a few minutes.

Q. You stayed there long enough, to feel sure, according to your recollection, that there was no one there but finishers? A. So long as I stay there, there was nobody else there but finishers.

LEWIS E. ORTON, 7249

Sworn by the Clerk.

EXAMINED

By Mr. Mulholland:

Q. What is your full name? A. Lewis E. Orton.

Q. Where do you live, Mr. Orton? A. 12 Austin St., Danbury.

Q. How long have you lived in Danbury? A. Over 7250
30 years.

Q. You are a member of the hatters' union? A. Yes, sir.

Q. Of what branch of the trade? A. Finishing.

Q. You represented that district in the state legislature here, did you, a few years ago? A. Yes, sir.

Q. You were also at one time a director of the hat finishers' association, were you not? A. Yes, sir, prior to the amalgamation.

Q. That was prior to the time that the United Hatters of North America came into existence in 1896 or 7251
'7? A. Yes, sir.

Q. Your time as a director expired at that time? A. Expired at that convention.

Q. Now up until the time that you were served with summons in this case, had you held any other office in the organization? A. I had not.

Q. Had you held any office in the local union? A. No.

Q. Then up until the time that Mr. Loewe commenced his suit against you, the only office you had held was a director in the old Hat Finishers' association? A. 7252
I had been vice president at one time prior to that.

Q. How long prior to 1896? A. I can't recall just the year. Prior to '92, I think, or about that time, I wouldn't say just when.

Q. Up until the time that your term expired as a director of the fair hat finishers' association, had you known or heard of that association engaging in any boycotting, interstate boycotting? A. I never heard of any boycotting at that time.

7253 Q. Did such a thing as a proposition to boycott anybody's interstate commerce or goods or sales, come before that board of directors at any time that you were a member of the board? A. No, sir.

Q. When did you first hear anything about the alleged facts of these special agents in visiting firms and attempting to persuade or intimidating them not to buy the goods of certain manufacturers? A. I read it in the News, testimony or affidavits, read here at the former trial.

7254 Q. You refer to the depositions? A. Yes, I refer to the depositions.

Q. Whose deposition? A. Hennelley was one, and from some business man from the west.

Q. That was after you had been served with summons, was it not? A. Yes, sir, that was at the former trial.

Q. When you were served with summons did you read it, or any portion of it? A. I looked at parts of it, one or two paragraphs, that is all.

Q. Did you read enough to familiarize yourself as to the nature of the document? A. I did not. It was a 7255 very lengthy document and I didn't read it.

Q. Do you recollect when the organization of the United Hatters first put these special agents on the road? A. I am not positive. It is my impression that the convention of 1896 first authorized agents on the road, but I won't say so positive.

Q. Were you present at that convention? A. Yes, sir.

Q. At that time did you hear the discussion in reference to the employment of those agents? A. Yes, sir.

Q. Can you state to the jury the purpose for which 7256 they were employed? A. The purpose for which they were employed was to go throughout the country and advertise and popularize the union label the same as any representative would of any industry, as a travelling salesman practically.

Mr. Mulholland:

You may take the witness.

CROSS EXAMINATION

7257

By Mr. Merritt:

Q. You never heard or read that the United Hatters or any of its officers and agents had engaged in boycotting? A. Not until that time.

Q. Until the time you were sued in this case? A. Not until the previous trial.

Q. Now before you were sued in this case, when the papers were served on you? A. I didn't even know it at that time. I wondered why I was brought in the suit.

7258

Q. Your mind is perfectly clear on that point, is it? A. Yes, sir.

Q. You attended the 1903 convention of the United Hatters of North America, didn't you? A. Yes, sir.

Q. And there you heard the report of President Moffitt, didn't you? A. I did, the most of it. I won't say I heard it all but the greater part of it I did.

Q. Let me read you some of it. You were a delegate from what local union? A. Danbury Finishers, Local No. 11.

Q. Mr. Moffitt reported somewhat as follows:

7259

"Profiting from the experiences of former fights, a campaign was at once inaugurated against the Roelof concern through agents on the road working upon the jobbers and dealers with whom the firm did business, while the operation of the factory and employment of men therein was left without interference. Our agents visited the North Western states, also Ohio, Illinois, Iowa, Massachusetts, California and Texas. Literature and correspondence were used freely in the campaign and wherever Roelof hats reached the market, appeals were made to those with whom the firm did business to aid in the fight for principle by demanding the union label in all hats that they bought and sold. In nearly every section these appeals met with hearty and willing response.

7260

To enter upon a detailed narrative of the Roelofs fight would be to trespass upon the time of this convention, occupy the hours that may profitably be devoted to other use in consideration of problems to be faced in the future, and serve no good purpose. Jobbers and wholesalers in every part of the country waited upon by our agents, or appraised of the situation by circulars and let-

7261 ters, met us fairly, and, as a rule, gave fair hearing to our case, a majority following up such action by refusing to handle the product of the factories until such time as our demands which were generally conceded to be fair and liberal, were complied with."

Then going on to tell about the American Federation of Labor, he says:

"Upon the direction of your general executive committee, your president attended the convention of the Federation of Scranton, and with the assistance of our delegates, had that body pass these resolutions:

7262 Whereas, the United Hatters of North America are at the present time engaged in a strike of large proportions at the factory of Henry H. Roelof & Co. of Philadelphia for the recognition of their union, and for union conditions;" and then follow a lot of whereases, and then comes this Resolution:

"Resolved, that this convention indorses and approves of the course pursued by the United Hatters of North America in their present fight against the wealthy concern that has declared it will never recognize any labor union."

7263 "Resolved that we call upon all international, national and local unions, affiliated with the American Federation of Labor to give all of the assistance possible to the United Hatters of North America, in the unequal fight which they are at present so manfully making against wrong and oppression, and we hereby pledge ourselves not to patronize any dealer or dealers who handle the product of non-union hatters, and more particularly the product of the firm of Henry H. Roelof & Co. of Philadelphia, Pa."

7264 "The adoption of these resolutions was followed up by the action of the convention in declaring a general boycott upon the product of the Roeloff factory. The effect of this action was almost immediately apparent. Throughout the country similar action was taken by local trades and councils, and it is not too much to say that the final settlement of the strike would have been much more difficult but for the cooperation and assistance thus secured."

Then he goes on and recites at length from the complaint by Henry H. Roelof & Co. in which they allege they have been injured to the amount of $250,000 by the actions

of John Moffitt, John Phillips, John Cords, W. G. Hennelley, George J. Phillips, Charles J. Barrett, Martin Gorman, Daniel P. Kelly and others, and after stating that, he says: 7265

"My principal reason for presenting so much of the text of this remarkable document to you, is to show to what extent and how effective the means adopted by your officers and approved by your directors and executive board had proved in the conduct of our fight to compel the adoption of union conditions in the Roelof factory."

Now I will skip over this part of the report, and further on he says: 7266

"The only other strike of importance since the last convention that is of more than passing important has been one now being waged against the non union firm of D. E. Loewe & Co. of Danbury. This fight was inaugurated soon after the conclusion of the Roelofs fight, for reasons almost identical. Loewe refused to treat with the organization, to even confer with your officers, and has been quoted as asserting that he would die before he would make terms with the union. It is unnecessary to say more about this fight at present than that it is progressing satisfactorily, and there is every prospect of its 7267
being concluded as successfully as have been the other fights of like nature we have prosecuted in recent years."

Now if you heard that report, how can you testify that you never heard your organization was engaged in boycotting before the suit? A. I think he used terms there that did not apply. I thought he was using stronger language than the case warranted, and I thought so at the time.

Q. How did you know anything about it? A. I knew nothing about it, but from a reading of his report—

Q. But the question was put to you, Mr. Orton, if 7268
you had heard or read of such matters, and you testified that you never heard or read of your organization being engaged in boycotting and you now testify that you sat by in this convention at this time and heard the president of your organization tell in full how they had conducted boycotts against one or two concerns; now how do you reconcile your testimony? A. I didn't say I have heard that portion read, but I have heard it since, so I know it is in the report.

7269 Q. Well, don't you call that boycotting? A. I answer it in this way, if you ask a friend of mine to abstain from buying a certain article in order to assist me, in what I consider to be wrong, I don't consider it a boycott.

Q. I am not asking you to explain,— A. That is the reason I claim it, that is the reason I answered the question that I didn't know of a boycott.

Q. You approved of what Mr. John Moffitt reported on, didn't you? A. Why, so, far as he went, I could see no boycotting.

7270 Q. You could see no boycotting? A. I could see no boycotting, and I read it afterwards, I read that over not a week ago, to be sure what language was used.

Q. You found the language where he used the word boycott, he uses the word "boycott"? A. But does it apply?

Q. Well, let's see; let me take up first what the resolution was, and see whether you call this work boycott; "Resolved, that we call upon all international, national and local unions affiliated with the American Federation of Labor to give all the assistance possible to the United Hatters of North America, in the unequal fight which they

7271 are at present so manfully making against wrong and oppression, and we hereby pledge ourselves not to patronize any dealer or dealers who handle the produce of non union hatters, and more particularly the product of the firm of Henry H. Roelof & Co. of Philadelphia, Pa."

Don't you call that boycotting? A. Well, there must be many people guilty of a boycott under that.

Q. Speak up, so I can hear you? A. There must be many people who are guilty—

The Court:

7272 That is not the question; do you call that description there a boycott?

The Witness:

I did not consider it so, Your Honor.

The Court:

Was that the view that you had when you answered Mr. Mulholland? A. Yes, sir.

Q. Then you think that the action of the American Federation of Labor, with all its branches, agreeing not to deal with any dealer who handles non union hats of any kind not a boycott? A. I think if they threatened a deal-

er, if he handles a certain line of goods, that they would use summary vengeance or something of that kind, that I would consider a boycott. 7273

Q. Don't they there call upon— A. They would seem to—

Q. The entire machinery of organized labor not to deal with any dealer who handles the hats of Henry H. Roelof & Co.; isn't that the greatest threat that ever could be made to a dealer in the way of injuring his trade? A. I should say not, I think it could be stronger. I think it could have been much stronger than that, a threat.

Q. Then Mr. Moffitt says in regard to it; "The adoption of these resolutions was followed up by the action of the convention in declaring a general boycott upon the product of the Roeloff factory." That is, after these resolutions were passed, further action was taken in declaring a general boycott upon the product of the Roeloff factory? A. By the Federation of Labor? 7274

Q. I will read the whole thing? A. I say, was that by the Federation of Labor?

Q. By the Federation of Labor and your organization? A. Our organization never passed such a resolution at our convention that I recollect. 7275

Q. I am talking about what followed the adoption of this resolution; "The adoption of these resolutions was followed up by the action of the convention (that is the American Federation of Labor in which your delegates from the United Hatters were present) in declaring a general boycott upon the product of the Roelof factory. The effect of this action was almost immediately apparent. Throughout the country similar action was taken by local trades and councils, and it is not too much to say that the final settlement of the strike would have been much more difficult but for the cooperation and assistance secured." A. I will acknowledge that I did not read far enough in the report, that is, I did not read that part of it. 7276

Q. You say you heard it in the convention? A. I say I don't know that I heard that part of it in the convention. I have read some of it since.

Q. You would not dispute you did not hear that report in the convention? A. I wouldn't say that I did hear that part of it in the convention. And I won't say I did not.

7277 Q. What part of it did you hear that you recollect? A. I couldn't say positively, but I was listening to the report some of the time, and I was out some of the time, I couldn't say what part of it I heard. I recollect reading part of that resolution you have just read, I can't tell what I did hear.

Q. I am talking about what you heard at the convention at that time? A. I don't recollect.

Q. You don't recall anything you heard in it? A. Yes I do. I was present when he commenced to make his report, and didn't stay until he had completed.

7278 Q. You testified on the last trial, you were asked if you heard the report of Mr. Moffitt? "(A.) I presume that I did I was present." That is your testimony at the last trial. A. No, I won't say I was present at the whole report, but I know I was a portion of it, when he started his report, but how far he had read, I can't tell, that I won't say positively.

Q. Now after this report was read, did you hear the part which related to D. E. Loewe & Co.? A. No.

Q. Did you hear the part which related to F. Berg & Co. A. I am not positive, I think so, but I won't say 7279 positively.

Q. Didn't you hear that they had made a boycott upon F. Berg & Co. or heard that at the time? A. I won't say positively, that is quite a number of years ago.

Q. I know it, but you have undertaken to testify way back at this time positively that you never heard or read anything to the effect of your organization boycotting or that your organization had been conducting a boycott? A. I stand by that.

Q. Now you justify your failing memory by saying it was years ago? A. No, I won't change the state- 7280 ment that I made, I will stand by it.

Q. Did you vote for the re-election of Mr. Moffitt? A. Yes, sir, I believe there was no opposing candidate if I remember correctly.

Q. Did you vote for the approval of this report? A. The report was accepted and referred to a committee, if I remember correctly.

Q. Let us see what was done? A. If I remember rightly the report was received and referred to a committee.

Q. What did the committee do with it? A. They 7281
made various reports, later in the convention, and some recommendations, etc.

Q. They made special recommendation, and wasn't there a final recommendation as follows, that it was the sense of the committee that the rest of the president's address be recommended to the convention to be adopted in a whole, and wasn't such recommendation adopted? A. I think there was.

Q. You voted for it? A. Yes, sir.

Q. Now, as I understand it, you do not disclaim knowledge of that Roelof resolution at the time? A. I 7282
am not positive at the time, but I have read it since, but I was not positive I was present to hear it read by President Moffitt.

Q. You are not prepared to say one way or the other? A. No, I am not.

Q. You are prepared to say you never heard of any boycotting by your organization? A. I never understood we attempted or proposed boycotting any one.

Q. You were appointed a committee on laws, weren't you? A. Yes, sir.

Q. That committee reported the constitution that 7283
was to be adopted and in effect until the following convention? A. Yes, sir.

Q. And in that constitution you recommended the following provision to be continued, did you not? "It shall be the special duty of the directors to look after shops under their jurisdiction, and shall use all means in their power to bring such shops into the trade." A Yes, sir, that was always understood by proper means, nothing illegal, and the thought never occurred—

Q. You don't want to pose here as a lawyer do you? A. No, but the thought never occurred to us that 7284
that construction would be placed upon it until asked that question at the last trial, and the law was immediaely changed at the next convention. The wording of the law has been changed since.

Q. Was it changed at the 1907 convention? A. No, the last convention.

Q. It was changed at the 1907 convention, was it? A. No, sir.

7285 Q. Were you present at the 1907 convention? A. Yes, sir.

Q. Isn't it a fact that they adopted a recommendation instructing agents to conduct a relentless fight against non union hatters?

Mr. Mulholland:

In the 1907 convention?

Q. Yes. And that they wrote a new provision into their constitution appointing agents to go out on the road and do that? A. I am not prepared to state. If it is in
7286 the record why of course it is so, but I am not prepared to say now whether it is so or not.

Q. Your recollection is not good enough for you to say? A. If it is a matter of record, I cannot deny it.

Q. Well, it is? A. I don't recall it.

Q. This is from the committee on President's report of 1907.

Mr. Mulholland:

That is objected to. That was after the last trial wasn't it?

Mr. Merritt:

No, it is before the last trial, but it is already in evi-
7287 dence, what I am going to read to him, one he considered in the 1907 convention himself.

The Court:

You may go into that matter.

Q. "We endorse.....that we continue our agents on the road and that they be instructed to make a relentless fight against the Knox and Roelof and all other products of foul manufacturers." Doesn't that sound familiar to you? A. Yes.

Q. And then after passing that recommendation in
7288 regard to the duties of agents on the road, this resolution was passed concerning the payment of agents who were to carry out their duties:

"Amend Article 9 of the constitution by creating two new sections known as sections 15 and 16, Section 15 to read as follows, that the General Executive Board shall be, and they are hereby empowered to appoint agents to be placed on the road for the purpose of agitating and advertising the union label of the United Hatters of North America, and perform such other duties as may be transmitted to them by said board. Agents so appointed must

be members in good standing of the United Hatters of North America. 7289

Section 16. It shall be mandatory on the general executive board to appoint at least one agent from local associations having a membership of 800 members or more who may be recommended for the purpose by the said local association or its executive officers." Do you remember that? A. Yes, sir.

Q. Then you knew at least two years before the trial in this case in the first instance that you had agents on the road? A. Oh, yes.

Q. Who were conducting a relentless fight against the product of foul shops, didn't you? A. Does that imply boycotting? 7290

Q. I am asking you a question? A. That does not necessarily follow from that.

Q. Answer the question, please? A. I knew they had sent agents on the road, yes, sir.

Q. To conduct a relentless fight against the foul hat shops? A. That is the wording of it.

Q. You knew this also from the report of John Moffitt in 1907:

"As a part of the fight against the non union Loewe factory, we had, as in other fights, advised and urged the dealer and consumers not to buy hats unless they contained the union label, and had as extensively advertised the fact that the Loewe concern was not a union factory. In consequence of this advertising campaign a widespread boycott was made upon the Loewe product, which was prosecuted by labor unions generally." 7291

Did you get that? A. I presume I did, at the time.

Q. Did you know that? A. Yes, I presume I did at the time.

Q. Well, I don't believe there is any use of my spending any more time with you. That's all. 7292

RE-DIRECT EXAMINATION

By Mr. Mulholland:

Q. Now, Mr. Orton, in order to understand this, I want to give you a definition of boycott, not that I believe in the definition, but to get you straightened out here. You knew then as early as 1903, at the convention,

7293 and you knew before this suit was commenced, that these agents were visiting the trade of various manufacturers and asking that trade not to buy the goods manufactured by that manufacturer; didn't you? A. Yes, sir, at least I did, so understood.

Q. How long before that did you know that, did you read in the Journal in different places? A. No, I heard it at the convention, the President was given full charge—

Q. I mean before the convention, I want to know if before the convention, you had read it in the journals or in the newspapers or anywhere else? A. Not to my rec-

7294 ollection, no.

Q. You mean you might have and forgotten it? A. I don't think I did, I don't wish to be positive of it, but I am quite sure I did not.

Mr. Beach:

As to the defendant, William A. Brennan and the defendant John Cords who were members of the board of directors of the United Hatters at the time of the strike, in Loewe's factory and thereafter, I have agreed with counsel upon the other side that it be admitted on the record that they are chargeable with notice of whatever ap-

7295 pears in the Journals of the United Hatters and the reports of the several conventions of the United Hatters during that period, and I understand that with that broad admission on the record, no examination of those witnesses will be necessary.

Then there is another witness whose name was not included as annexed to the stipulation heretofore entered into, and by arrangement with counsel on the other side, we have agreed that the name of Daniel McInerney should be added to the list of the 115 defendants who have already been stipulated in regard to.

7296

GEORGE W. MOREHOUSE,

sworn by the clerk.

EXAMINED

By Mr. Beach:

Q. Where do you live, Mr. Morehouse? A. In Bethel.

Q. How old are you? A. 74.

Q. Were you a member of the Makers or Finishers **7297**
Association down there? A. Finishers.

Q. Were you ever an officer of the Local Union there? A. I was.

Q. What office did you hold? A. President.

Q. And for how long? A. I think, as near as I can recollect, 12 or 14 years.

Q. And do you remember when you ceased to be president? A. I think it was in 1907 or '08.

Q. So you were president of that organization in the years 1900, 1901, 1902 and 1903? A. I was.

Q. As such president, did you or not, attend the **7298**
meetings of the organization with considerable regularity? A. I did.

Q. Were you or not, in those years, a reader of the Journal of the United Hatters? A. Occasionally, not very regularly.

Q. What is the condition of your memory now, Mr. Morehouse? A. Very defective, very defective. And has been.

Q. Suppose your attention was called to any article in that Journal, I want to know what you could swear to as to whether you had or had not read it? A. Well, I **7299**
could not conscientiously swear that I had or had not. I might possibly recall some matters and others I could not possibly.

Q. So that so far as your present recollection is concerned, you could not say what if any parts of that Journal you have read? A. I don't think so.

Q. Now in regard to another matter; there were I suppose reports made to your local union from time to time by delegates who had attended the conventions of the United Hatters, is that so? A. That is so.

Q. And presumably you were present when those **7300**
reports were made? A. I was.

Q. Do you know whether or not at those occasions, the report of the president was read to the meeting, do you remember whether it was or not? A. You mean the president of the national organization?

Q. Yes? A. I may possibly have heard it.

Q. But from your present recollection you could not tell, you could not swear whether you had heard those re-

7301 ports of President Moffitt read or not? A. I couldn't swear to that, not certainly at all.

The Court:

Any cross examination of this witness, Mr. Merritt?

Mr. Merritt:

Why, no, I don't care to cross examine him.

CHARLES O. LATHROP

Sworn by the Clerk.

EXAMINED

7302 By Mr. Mulholland:

Q. Where do you live, Mr. Lathrop? A. Bethel, Conn.

Q. How long have you lived in Bethel? A. Oh a matter of 25 years or so.

Q. Married man? A. Yes, sir.

Q. Seven children? A. Seven children livin, yes, sir.

Q. You worked for Mr. Loewe, I believe, some years ago? A. Yes.

Q. Now what, if any office have you held in the hatters organization? A. I have held the office of vice president and

7303 secretary of Local No. 1, that is the Bethel Hat Makers Organization.

Q. And covering what period of years? A. From about 1899 until—I am still an officer.

Q. Have you been a delegate to any of the conventions? A. Not prior to this suit. I was a delegate to the convention of 1911 of the United Hatters.

Q. That was last year? A. Yes, sir.

Q. You have been a reader of the Journal for a good many years back? A. Yes, I used to generally read it.

Q. And have read the reports of the conventions as they

7304 have come in? A. Yes, sir.

Q. And you knew in a general way, did you not, that the officers of your organization had followed the goods of manufacturers into other states? A. I did.

Q. And for the purpose of attempting to prevent the sale of non union goods? A. I did.

Q. You had that notice for some time at least prior to the commencement of this suit? A. I did, yes.

Cross examination waived.

PETER McGLONE,

7305

Sworn by the Clerk.

EXAMINED

By Mr. Mulholland:

Q. Where do you live, Mr. McGlone? A. Danbury, sir.

Q. How long have you lived in Danbury? A. 38 years.

7306

Q. You are a member of some Hatters organization? A. Yes, sir, I belong to Bethel now.

Q. To which branch of the trade? A. Makers.

Q. Have you held any office in your local union? A. No, sir.

Q. Or been a delegate to any of its conventions? A. I was to one.

Q. That was the convention of 1903? A. I think so, yes.

Q. That was a month or so before this suit? A. About that time.

7307

Q. At that convention did you hear the report of Mr. Moffitt? A. Yes, sir, I heard it read.

Q. And you learned at that time that the agents of your organization had been boycotting Berg and Roelof and other manufacturers? A. Well, I heard his report read of course.

Q. No prior to that time you had read the Journal from time to time? A. Once in a while, not very often.

Q. Now prior to your going to the convention in 1903, had you heard that your officers were engaged in boycotting? A. Well, I knew they had been on the road, I didn't know whether they were boycotting. I suppose I didn't understand it.

7308

Q. Did you know that the agents were out calling upon Berg's customers and Roelof's customers, attempting to persuade or intimidate them not to buy the goods of those manufactures? A. I couldn't swear I knew. I knew they were out on the road advertising the label, and I supposed probably that too, I couldn't exactly tell.

Q. Did you hear of the Loewe strike? A. Yes, I heard of it I didn't know much about it.

7309 Q. Were you reading the papers at that time, the Danbury papers? A. Yes, once in a while read the evening paper, yes.

Q. Following the time when the men went out of Loewe's plant on strike, did you read the Danbury papers? A. I read the evening paper.

Q. And did you at any time between that time and when the suit was commenced, read anything of any boycotting being carried on against Mr. Loewe? A. I have heard of it some.

7310 Q. And up until the time the suit was commenced you had heard of it had you not? A. Well, I think so, yes sir.

Q. You say you never held a local office? A. No, sir.

Mr. Mulholland:

That is all.

Mr. Merritt:

That is all.

Cross examination waived.

Mr. Beach:

If your Honor please, the following named defendants admit upon the record that they are chargeable with notice of

7311 what appears in the Journal of the United Hatters of North America, and in the printed reports of the conventions of the United Hatters, which have been admitted in evidence in this cause: Peter Gallagher who was a delegate to the State Federation of Labor in 1902, and a delegate to the United Hatters Convention in 1903, and has been president of, or was elected president of the Makers union in Danbury, in 1903.

Howard S. Gilbert who has been treasurer of the Local Finishers Association of Bethel since 1893.

George H. Gilbert who was vice president of the Bethel Finishers Association at and about the time of the Loewe trouble.

7312 Charles H. Green who was vice president of the Bethel Makers Association at and about the time of the Loewe trouble for some years, and part of that time, acting president.

Simon Blake, who was vice president and acting president of the Danbury Finishers Association in 1903, and who is now president of the United Hatters of North America.

The Court:

They were chargeable with notice?

Mr. Beach:

They all admit that they are chargeable with notice of

what appears in the Journal of the United Hatters and the printed reports of the United Hatters conventions, which same have been admitted as evidence in this case. 7313

By the Court:

And upon that admission you do not put those men upon the stand?

Mr. Beach:

That admission is made to save their examination and cross examination, which we conceive will result substantially in that condition being made to appear.

The Court:

That is acceptable to the plaintiffs. 7314

Mr. Merritt:

Yes, your Honor, it is.

The Court:

As I understand it, those are all the witnesses you have here?

Mr. Beach:

Those are all the witnesses we now have ready to testify here.

Court adjourned until 9:15 A. M. Friday.

Friday, October 4th, 1912.

Morning Session, 10:00 o'clock. 7315

Witness,

MARTIN LAWLOR,

Sworn by Mr. Carroll.

EXAMINED

By Mr. Beach:

Q. What is your full name, Mr. Lawlor? A. Martin Lawlor.

Q. You are one of the defendants in this action? A. Yes. 7316

Q. And where do you live? A. Brooklyn, N. Y.

Q. You formerly lived in Connecticut? A. Yes, sir.

Q. At the time this suit was brought? A. Yes.

Q. At the time this suit was brought what was your connection with the United Hatters or with any local organization of hatters? A. I was Vice-President of the United Hatters, and Secretary of Local 1 of Bethel.

Q. That was the makers or finishers? A. Makers; Bethel Makers.

7317 Q. How long had you been secretary of the Makers in Bethel? A. From 1890.

Q. And how long had you been Vice-President of the United Hatters of North America? A. Since 1897 or 1898.

Q. And you had attended conventions of the United Hatters regularly? A. I did.

Q. And did you attend meetings of any conventions of the American Federation of Labor? A. I did.

Q. Which ones, up to and including 1903? A. 1898, 1899 and 1902.

7318 Q. And I believe you were also sent by the American Federation of Labor to England as fraternal delegate in the Fall of 1903? A. I was.

Q. So that you were entirely familiar with the conduct of the affairs of the United Hatters of North America? A. I was.

Q. When did you first hear of any attempt to unionize the factory of Mr. Loewe? A. I can't recall the date. Sometime previous to the time that the men left the factory; some months, maybe, previous.

Q. Who did you hear about it from? A. From Mr. Maher, I think first; afterwards from the meetings, some of

7319 the meetings we had with Mr. Loewe.

Q. You were present at some of those meetings with Mr. Loewe when the question of unionizing his factory was under discussion? A. I was.

Q. And when were you at the time when the strike occurred at Mr. Loewe's factory? A. I was in Bethel.

Q. Were you in Danbury then? A. No; I lived in Bethel at that time.

Q. By the way, you had read, of course, from time to time the Journal of the United Hatters? A. I have.

Q. As published? A. I have read them as a rule.

7320 Q. And the reports of conventions? A. Yes.

Q. And you were present? A. Yes.

Q. And you heard the reports of President Moffitt as they were made at those conventions? A. Yes.

Q. So far as you know, Mr. Lawlor, was there or not at the time when Mr. Loewe's men went out, any intention on the part of anybody connected with the United Hatters of North America to send out agents on the road to follow his goods? A. There was not.

Q. And when, so far as you know, was any such intention formed? A. Why, it must be some time after the matter was placed in the hands of Mr. Moffitt. I wasn't familiar with it after that. 7321

Q. At or about the time when the matter was turned over to Mr. Moffitt, you say? A. Yes, sir.

Q. Which is August 6th I believe, according to the records? A. I don't recall the date. Whatever the record says.

Mr. Beach:

Is that the correct date?

Mr. Merritt: 7322

I don't know that it was turned over to Mr. Moffitt; it was on August 6th turned over to the General Executive Board of which he was one of the members.

Q. By the way, that General Executive Board turned it over to Mr. Moffitt? A. Yes.

Q. By some vote; do you recall the date of that vote? A. I can't recall now.

Q. Shortly after August 6th? A. Some time after; possibly a week or two some time; I couldn't say now.

Q. When that was turned over you realized that Mr. Moffitt might send agents out on the road to follow Mr. Loewe's goods up? A. I realized that Mr. Moffitt would try to get the factory unionized if he could. 7323

Mr. Beach:

I guess that is all.

CROSS EXAMINATION

By Mr. Merritt:

Q. Have you the books of the United Hatters with their accounts in? A. I have.

Q. The ones that Mr. Maher produced at the last trial? A. No, I haven't. 7324

Q. You have succeeded him as Treasurer of the organization? A. I have.

Q. Didn't you get possession of those books when Mr. Maher went out? A. The book that we had here at the last trial was taken out of the trunk in this court house or upon the way in transit to New York. I think you will recall Mr. Maher inquiring of you at that time if you knew anything about that book.

7325 Mr. Merritt:

Not that I recall. It is possible.

Mr. Beach:

I agree that anything that is in the record now concerning that may be used as if the book were present.

Q. That is all right; but was there only one book used at the last trial? A. There were other books, but it was the only one book that we had here that is missing.

Q. Just what book was that? A. It was the old ledger.

7326 Q. What date approximately did that come to, do you remember? A. It went up to 1905 or 1906.

Q. Oh, then it covered all the period which we would be interested in in this case? A. It did.

Mr. Merritt:

And we can use the former testimony as far as that is concerned?

Mr. Beach:

Whatever is in the printed record as extracted from that book in the former trial may be used now as if the book was here.

7327 Q. That is all right then. Do you remember the date when Mr. Loewe made his final reply to the national officers to the effect that he would not unionize? A. I don't remember the date.

Q. You remember that there was a letter? A. Yes.

Q. Which Mr. Maher testified he received? A. I remember hearing it spoken of. I don't remember seeing the communication.

Q. And the letter ended: "Firmly believing that it is for the interests of Danbury and our employees, etc." "If attacked we will take all legal steps to protect ourselves." You remember there was a letter of that character? A. Some-

7328 thing of that description, yes; I don't remember the exact words.

Q. Well, I am not giving the exact words, I am giving you the purport of the closing language; and that letter, according to the testimony, I believe was sent by Mr. Loewe on the 22nd day of April, wasn't it?

Q. The 22nd day of April, 1901; now you knew at that time that Mr. Loewe had given you a final answer that he would not unionize, didn't you? A. I understood it from the tone of his communications.

Q. Now the Roelofs trouble started on the 19th day 7328
or 20th day of April, 1901? A. I don't recall the date.

Q. According to the record; I suppose you don't dispute the record at all, do you, as to those dates? A. No.

Q. And don't you recall that the Roelofs trouble started just about the time that Mr. Loewe gave this answer? A. I don't. The records will show whatever it was.

Q. You don't recall that now? A. No.

Q. Well, the records do show that those two things happened about the same time. Now do you remember the date when the Roelofs trouble was ended? A. No, I don't.

Q. Well, in your minutes, which appear in the August 7330
Journal for 1902 on page 17 you close as follows: "The Board held daily session with Mr. Roelofs, always reporting to the local Executive Board the progress made at each meeting, until July 19th, when negotiations were closed and an agreement that will compare favorably with other union factories as to prices and other conditions was signed, and the factory of Henry H. Roelofs & Co. was for the first time in its history declared union. Martin Lawlor, Secretary Pro Tem." So that the Roelofs trouble was finally terminated by this agreement executed in Philadelphia on the 19th of July, 1902. A. According to the record, I don't recall the dates. 7331

Q. Yes. Now it is also in the record that on the 24th day of July, 1902, Mr. Maher had come to Danbury and telephoned Mr. Loewe, and Mr. Loewe, refusing to see him, had given directions to call the men out to a meeting; that is five days after you settled with Mr. Roelofs. Now I would like to ask you if it is not true, in view of the fact that Mr. Loewe gave his final reply at the time the Roelofs struggle started, and that you waited until just after the termination of the Roelofs struggle to act on Mr. Loewe's reply, which was a period of some fourteen months—in view of these dates and those circumstances, isn't it true that you delayed the Loewe matter 7332
until you could settle the Roelofs trouble, intending at that time to take up the Loewe trouble after the Roelofs trouble was settled? A. I don't think it—I don't know, Mr. Merritt, I don't recall any talk with the Board on that direction. Mr. Maher lived in Danbury at that time and was in touch with the situation all the time; he didn't go to Danbury for that purpose I will state; he lived in Danbury then and was a local officer of the Danbury District, and was entirely in touch with the

7333 situation with Mr. Loewe in Danbury, and the General Executive Board –

Q. But, under ordinary circumstances, when you would receive a final reply from a man you would directly take your action then, wouldn't you, on his reply? A. Why that might be true; but it was entirely a local affair; entirely a local affair at that time, and Mr. Maher was dealing with it rather as the President of the Danbury Local Association than as the National Treasurer.

Q. Mr. Connolley and Mr. Sculley say that it was entirely a national affair? A. Well, that is only my under-
7334 standing of it, what I remember of it.

Q. You had seen Mr. Loewe in regard to this matter in 1901, hadn't you? A. Yes.

Q. Well you wouldn't have taken that up with him in that way if it was purely a local affair, would you? A. Well, at that time I think we were called into it simply as a matter of conference with Mr. Loewe who wanted to know something about the workings and condition of the National Organization, and what he could expect to get as a union factory.

Q. But it was your General Executive Board which met him, and it was to your General Executive Board that he made
7335 his final reply? A. That is true; but that was brought about by Mr. Maher as a local officer of the Danbury District.

Q. How do you reconcile that statement with the fact that it was your General Executive Board, of which Mr. Maher was a member, that was acting on the matter? A. Well, the manufacturer, as a rule, wants to do business with the National Association so that he would know the formal conditions—sometimes they do make agreements with local associations and the national don't conform to it or don't want to abide by it and sometimes it appears contrary to their national rules.

7336 Q. You don't want to give the impression that it was Mr. Loewe that sought out your national officers, and that you did not seek out him? A. Why, I don't know from which side it came. I am not prepared to say, but I think it would be just as likely from that way as Mr. Maher; Mr. Loewe, as I recall, was looking for information at that time, and I can't recall just what the information was.

Q. You don't recall? A. I don't recall.

Q. Well, Mr. Maher testified at the last trial, as I recall it, that for over a year prior to this time that you met him he

had been to Mr. Loewe and that you had reported back to your General Executive Board that he was going to exhaust all means to bring about that result and that your Board had authorized him to go ahead, and that he believed he was acting with the approval and authority of your Board? A. That might be true, Mr. Merritt: it is the duty under our law of both the local and national to try to unionize all factories, so that it would be his duty as local or national along that line of course. 7337

Q. Now as you think the matter over, can't you give an explanation as to why the period of delay of fourteen months which you made in acting upon Mr. Loewe's matter after you received his final reply corresponded to almost a day to the period in which you were engaged in the Roelofs matter? A. I can't I don't recall anything in connection with what you want in that matter, Mr. Merritt. 7338

Q. Well now it is true, isn't it, that when this matter was taken up by the Board of Directors on August 6th you just dropped the Roelofs matter as having been ended? A. Yes.

Q. And the very next item of business was the Loewe matter, thereby showing that you were taking them up in successive order? A. Well, it would be first the duty—the Roelofs matter was quite an extensive affair. We had a big pay roll over there and I think the officers considered it their first duty to report that that large expenditure had ceased; make a report on unionizing that factory, and they considered that the most important business. 7339

Q. Well, you were in Philadelphia on the 19th of July with Mr. Moffitt, Mr. Maher, Mr. Barrett—

Mr. Davenport:

And Phillips?

Q. Was Mr. Phillips there too? A. It don't seem so from the record there, because I was acting as Secretary; he was the regular secretary.

Q. Then Mr. Barrett, and Mr. Maher, Mr. Moffitt and yourself were there? A. Yes. 7340

Q. On the 19th day of July; now was this agreement signed in the afternoon or in the forenoon of the 19th day of July? A. I don't recall.

Q. Did you disband on the 10th day of July? A. I suppose so. I can't remember distinctly.

Q. Do you want to be understood as testifying that you don't recall any mention made at that time concerning the

7341 taking up of the Loewe matter, which, as a matter of fact, was taken up five days later, and which, as a matter of fact, you had already been negotiating about some fourteen months ago? A. I don't recall any mention made of it at the Philadelphia meeting, or during our visit there. I don't think there was any mention made of it.

Q. Can you account for any of your time during those four days from the 19th of July to the 24th of July? A. No.

Q. You don't know whether you came right back to Bethel or not? A. Very likely I did; but I can't say.

7342 Q. You don't know whether you came back with Mr. Maher or not? A. I don't recall now, Mr. Merritt; the chances are we came back together to New York. I wouldn't be positive.

Q. You haven't any recollection of Mr. Maher mentioning this subject to any of you gentlemen at that time? A. I have not. I think we were full of the settlement with Roelofs and talked that all the time rather than anything else.

Q. Now after you came back, and before Mr. Maher and Mr. Barrett, who were with you, as I understand it, gave their instructions to have the men called out of the Loewe factory,

7343 didn't you hear anyone talk about the matter? A. Why, I presume there was some talk about it. I can't recall just what it was.

Q. During those three or four days? A. There wouldn't be any between those three or four days; you see the first meeting we had in Danbury—we wouldn't meet at all very likely in the interval.

Q. Now you say that you turned this matter over to Mr. Moffitt by the General Executive Board? A. Yes.

Q. And you did that some time after the meeting of the Directors on August 6th? A. Yes.

7344 Q. Have you any other minutes of the General Executive Board besides those that are published here? A. No.

Q. You destroyed any memoranda you kept and this is your official record? A. Yes.

Q. So that if you took such action it would appear in these Journals would it not? A. If the action was taken at the meeting of the Board it would appear there.

Q. Well, can you direct me to any place where I am apt to find them? A. You would find it very likely, if it is there, in the August report of 1902.

Q. Do you know, Mr. Lawlor, yourself, whether or not it is here? A. I don't. No. I can't say, Mr. Merritt; you are more familiar with those than I am. 7345

Q. Well, that is a compliment. There are the only meetings I find. September 15th, September 16th, September 18th, 1902, and I don't find any meeting in August. Now see if you can find any reference to this matter in those minutes? A. It might be done at an informal meeting. That I am not positive of.

Q. As a matter of fact, a great deal was done at the informal meetings and not entered in these minutes? A. Not of any great importance that we would want as a matter of reference. 7346

Q. Wouldn't you call this a matter of great importance? A. Well, in turning it over to Mr. Maher it only gave him authority to act for the other three; they turned their rights in the matter over to Mr. Moffitt rather.

Q. That you would not recall as of sufficient importance to record in the minutes? A. Why, ordinarily it would be; but it might not in this case; but in other cases it would be recorded.

Q. Now, as a matter of fact, in the entire minutes of your General Executive Board you won't even find a reference will you, to the Loewe suit after it was started; or shortly after it started; I don't mean to bring it down to date— A. I think there are a lot of references to the Loewe suit after it was started. 7347

Q. Take the minutes of September and October, 1903. There is no reference to the Loewe matter there that I have been able to find? A. Well, the Journal I think is usually behind; that is the October Journal might not be got out until November and the matter have gone over in that way.

Q. You don't understand me; I don't mean the Journal for October, but I mean the minutes for September 28th, I think it is, and during October, 1903. A. If it was in the printed Journal, I mean. 7348

Q. Yes, there is no reference to the Loewe matter whatsoever that I can find. Do you know of any? A. Why, I thought there was a lot in it. I wasn't there just at that time. I thought there was a lot in it in reference to it; as I say, I think you know more about it than I do.

Q. I will qualify my remarks because it may be there is some reference of no importance, but no reference that I can

7349 find? A. Isn't it stated there that the suit was brought and all about it?

Q. No reference to any action taken by your organization in connection with it? A. Why, there was no action taken possibly by our organization in connection with it.

Q. Mr. Connolley stated that he came down and met you gentlemen and you ratified everything that he had done in the matter in connection with the employment of counsel, etc? A. That would be done, possibly, without a formal meeting.

7350 Q. He stated that you were all present, the whole Board was present? A. Well, I wasn't present because I was in England at that time.

Q. September and October, 1903? A. Yes.

Q. In the minutes of September 28th, 1903, and October 5th, 1903, I find no reference to such a matter as that? A. As the employment of counsel?

Q. I think I will go further and say that there is no reference to the suit at all that I can find; what I was trying to get at, I find no reference there whatsoever is that matters of primary importance to your organization that are acted upon formally or informally do not necessarily appear in these

7351 minutes, do they? A. Everything, that is the motions and everything presented in a regular meeting or formal meeting is recorded; sometimes they are considered informally, and usually matters of very little significance, and not made a matter of record.

Q. You don't call these matters that I am talking about of little significance, do you? A. Well, the employment of counsel—I don't know just how that was brought about, only just what I read about it here through you.

Q. When did you first see Mr. Moffitt in Danbury in 1902 after the Loewe strike? A. I can't recall.

7352 Q. Some time before the meeting of the Board of Directors? A. Very likely.

A. I say I can't recall when I first met him.

A. All right.

Q. Some time between the 25th of July and the 1st of August you were conferring with Mr. Maher and Mr. Moffitt concerning these matters? A. I don't recall. I might have, but I am not positive. The chances are that I may have seen Mr. Maher because he lived in Danbury, but it is doubtful if I had conferred with Mr. Moffitt or had any communication with him.

Q. That is when Mr. Moffitt came to Danbury, I am talking about? A. That would be the morning meeting which was on the 6th, as I understand you. 7353

Q. Well, the records show that Mr. Moffitt was in Danbury as early as that; I guess you don't recall. A. I don't recall.

Q. That is the truth of this situation? A. I can't recall dates that far.

Q. Did you attend any meeting where the strikers were gathered? A. No.

Q. None at all? A. None at all.

Q. Did you attend a meeting of the American Federation of Labor in New Orleans in 1903? A. I did. 7354

Mr. Davenport:

1902.

Q. 1902, I should say? A. 1902, yes.

Q. Who else was there besides yourself, from the Hatters? A. Mr. Maher and Mr. Moffitt, I think.

Q. And did you all have rooms together in the same place? A. No, Mr. Moffitt and I roomed together; Mr. Maher roomed in another hotel.

Q. You discussed with Mr. Moffitt at that time the Loewe matter? A. I don't recall.

Q. Well, you knew at that time Mr. Loewe had previously sent out his letter to you people, saying that he would take legal steps to protect himself, and that he had subsequently mailed circulars to the hatters of Danbury, warning them that they were liable, and publishing them in the Danbury News; you knew that, didn't you? A. I must have read it in the Danbury News, yes. 7355

Q. Well, the matter had assumed such shape that it was of considerable importance in your eyes, wasn't it? A. Why, I suppose it would be. I don't recall talking of it. We may have talked about it. I don't deny that we did, but I don't recall a word about it.

Q. Well, did you ever meet a man named Rosenberg at that Convention; Ed Rosenberg from San Francisco? A. I know him by sight. I don't believe I ever talked with the man, that I recall. 7356

Q. You don't recall talking to him in 1902 at New Orleans? A. I don't think so. I don't think I ever spoke to the man at all; but I know him there as a delegate to the Convention.

7357 Mr. Merrittt:

I would like to ask if Mr. Maher is coming?

Mr. Mulholland:

I will take care of that. We will have him here Wednesday.

Q. Now, at the time of the Loewe trouble you were Vice-President or Secretary? A. Vice-President.

Q. When did you become Secretary; 1904? A. 1904.

Q. And Mr. Maher was Treasurer of your organization? A. Yes.

7358 Q. So that any payments made would come directly under his attention, and not under yours? A. Under his or Mr. Phillips.

Mr. Davenport:

Do you remember the date of the death of John Phillips? A. I think it was the first of March, 1904.

Mr. Davenport:

And you immediately succeeded him? A. Yes.

By Mr. Merritt:

Q. Now, Mr. Moffitt is the man who had direct charge of the agents, isn't he? A. Yes.

7359 Q. As a matter of fact, the agents were appointed by the General Executive Board, were they not? A. They were.

Q. They reported to Mr. Moffitt? A. To Mr. Moffitt.

Q. Now I find here in the records statements of a great many reports having been published in the Journal; have you got those reports? A. I have not.

Q. What has become of them? A. The reports were all sent to Mr. Maher—or to Mr. Moffitt who was editor of the Journal for to be published in the Journal I presume and he only put in such parts of them as he saw fit.

Q. Well, what did he do with the others? A. I don't know.

7360 Q. Mr. Moffitt is the man who would have those and know what was done with them? A. They come to his home where he edited the Journal.

Q. Also addressed to your office, aren't they, Waverly Place? A. No, they usually wrote to his home, because he wasn't always in the office.

Q. During all this period Mr. Moffitt has been the man who has had charge of these agents? A. While he was President.

Q. While he was President, and he was President up to 1907? A. Yes. 7361

Mr. Davenport:

1907?

Witness:

1911.

Q. 1911, I should say; and during all that time you have read the reports from time to time? A. I have.

Q. And you have voted to leave the management of the agents in Mr. Moffitt's hands? A. Yes, sir; I did; I considered it was his duty as President.

Q. Then Mr. Moffit is the man who could tell us more about the agents than any one else? A. Naturally. 7362

Q. How long was Mr. Moffitt President of the organization? A. From 1897 to 1911, fourteen years.

Q. And you voted to turn the management of the Berg matter and the Roelofs matter and the Loewe matter all over to Mr. Moffitt? A. I did.

Q. And when you voted to turn the Loewe matter over to Mr. Moffitt you were familiar with his methods as reported in connection with the Berg and Roelofs matters were you not? A. I was.

Q. Have you got any minutes of any minutes besides those reported in the Journal or the Convention proceedings? A. I have not. 7363

Q. I find references in the Journal to the effect that according to that report minutes of the closed session of the General Executive Board, or Board of Directors, I have forgotten which it was; now where would we find the minutes of that closed session, they don't appear here, but they were evidently in existence? A. It might be just a scrawl he kept of what was done, if there was a closed session.

Q. It says here in regard to the Board of Directors, December, 1903: "The minutes of respective sessions, both closed and open, were read and adopted with very few corrections": Now apparently those minutes were in existence at that time and were corrected at the formal meeting of the Board, and yet they never appeared in the Journal; can't you tell us where we can find these minutes? A. There is no such minutes in existence, Mr. Merritt. 7364

Q. Have they been lost or destroyed? A. They haven't been destroyed; there was no actual minutes; there might be just a note taken by whoever the secretary was, during the progress of the closed session if there was a closed session.

7365 Q. But those were minutes which were read and adopted with corrections and they were evidently formal minutes acted upon at a formal meeting? A. I can't understand that matter. I don't recall any reference to it, and I know positively there are no minutes other than that; that is our entire record. Mr. Davenport:

Q. Now, Mr. Lawlor you attended the Convention of the American Federation of Labor in 1898 as a delegate from the United Hatters? A. Yes, sir.

Q. And did Mr. William F. Leigh of Bethel also attend as a delegate? A. He did.

7366 Q. L-e-i-g-h? A. Yes.

Q. In 1899 you attended the convention of the American Federation of Labor as delegate from the Connecticut State Branch? A. Yes, sir.

Q. And do you recall who were the delegates from the United Hatters? A. Mr. Sculley and Mr. Maher, I think.

Q. Well, the next convention that you attended in 1900, you attended as a delegate from the United Hatters? A. I don't think I attended the 1900 Convention.

Q. Well, which is the next one? A. 1902, if I recall.

Q. Oh, yes, I guess you are right, 1902; and in 1903

7367 had you then returned from Europe? A. No.

Q. Didn't you get back before the Convention was over? A. No.

Q. Your attendance at the Trade Union Congress of Great Britain, at which you made an address, appears as September 11th, 1903, and the Convention at Boston, Fanuel Hall, was in— A. November, I think.

Q. November; I thought that was December? A. November.

Q. Well, you recall that you were not there? A. I was not there.

7368 Q. But you signed the report with your fellow fraternal delegate, Max Hayes, which was read in the Convention? A. I agreed with him before he left England that I would agree to any report; he would read it. I didn't sign it. I didn't know what it was at that time.

Q. At the Convention of 1902 was the Danbury Central Labor Union represented by Mr. Scollin, as delegate? A. It was.

Q. And do you know who the Connecticut Federation of Labor was represented by? A. Mr. Scollin; that is right, I guess.

Q. And the Danbury, Conn., Central Labor Union was represented by John E. Jones, 153 Main Street, Danbury, Conn.? A. Yes. 7369

Q. Do you know what trade he belonged to? A. He was a hatter.

Q. And I notice in one of these conventions a man named Beale representing the Connecticut State Branch; do you know him? A. I think I did at the time.

Q. You don't know what his trade was? A. I don't. No.

Q. Well, you attended these various conventions and wheresoever, I suppose, your name appears as voting in the call of the Yeas and Nays you were there and voted? A. Very likely. Sometimes one votes for the delegation, as a rule, whether he is there or not. 7370

Q. Well, when they don't vote by delegates and when they have a roll call; do they call for the roll? A. One votes the entire delegation, as a rule.

Q. Well, when the Convention convenes in the morning they usually have a roll call and they don't put down those who don't respond to their names; the absentees are put down here, and if your name doesn't appear among the absentees it would seem, would it not, that you were presentt? A. No, it would not. 7371

Q. How would that be? A. The method of calling the roll is they have a box by the door and cards, and where each man would sign the name, and generally it is the rule that one would put in the name for three or four, and they might come in later, or probably not come in at all, as the case might be.

Q. I will ask you when it came to the election of officers, President, Secretary-Treasurer and Vice-President, whether you voted? A. Is that the New Orleans Convention?

Q. Well, New Orleans, yes? A. I was there. 7372

Q. And in 1898? A. I can't say positively about that.

Q. Well, the last thing done at the Convention, about, is the election of officers? A. The very last thing of the meeting.

Q. Always on the last day? A. Yes, that is right.

Q. After all the other work is done they take up the matter of election? A. They usually set aside a certain day, on Saturday, as the special order for the election of officers.

7373 the Convention at New Orleans, to certain votes that were taken in regard to putting concerns on the unfair list in the American Federation of Labor. This, Your Honor, is directed to the point which I suppose my friends will seek to make to the effect that never were resolutions adopted in a convention of the American Federation of Labor putting a concern on the unfair list unless they had been previously reported upon by the Executive Council, as Mr. Gompers testified.

Q. Let us save time by reading: "Resolution No. 62 by delegate Jeremiah Cotter, United Gold Beaters National Protective Union of America; whereas the Hastings Co. of
7374 Philadelphia, Pa., comprising the Kemp Company Gold Leaf Manufacturers of New York City, refuse to pay the union wage scale and agree to union conditions; be it resolved by this 22nd Annual Convention of the American Federation of Labor that the said firm be placed upon the unfair list. Committee reports favorably. Adopted. Resolution No. 86. Whereas the United Cigar Stores Co., an adjunct to and the distributors of the product of the American Cigar Co. is attempting to control the retail cigar trade of this country, selling almost exclusively the products of underpaid, child and female labor, and whereas this company is unfriendly to the
7375 best interests of organized labor, and particularly the Cigar Makers International Union be it resolved that we call on all friends of organized labor to refuse to patronize any of the United Cigar Stores, and be it further resolved that the American Federation of Labor place these stores on the unfair list. Committee reports favorably. Adopted." Well, here is a short one. "Resolution No. 97 by Delegate Henry Fischer, Tobacco Workers International Union. Whereas the Tobacco Workers International Union have been and are still engaged in a severe contest with the American and Continental compaies, commonly known as the Twin Trust, and whereas said
7376 trust controls a large proportion of the output in the tobacco industry thus making it difficult for the Tobacco Workers to successfully push a boycott against each individual brand made by the Trust; therefore be it resolved that the American Federation of Labor, through its officers and organizers give special aid and assistance to the Tobacco Workers in pushing a boycott against each individual brand and all brands of tobacco made by both the American and Continental Tobacco Trusts; and be it further resolved that the American Federation of Labor request all affiliated unions to assist the tobacco workers by vigorously pushing a boycott against all brands of tobacco

Q. Now, I want to call your attention as you attended sold in their locality made by the American and Continental Tobacco Trusts. Committee reports favorably. Adopted." And now come to another short one. 7377

These are on pages 167, 168, 169 and 170, in the report of the proceedings of the Convention of 1902. "Resolution No. 122 by Delegate Thomas J. Edwards, Rubber Workers' Union 8622: Whereas the firm of Hood Rubber Co., manufacturers of Rubber Boots, shoes and arctics at East Watertown, Mass. are upon the unfair list of the American Federation of Labor; and whereas many of these unfair goods are being sold in cities and towns where organized labor is strong, and the said firm has been compelled to enter new fields, owing to the effectiveness of the fight being waged against them, and have been compelled to remove their brand of Hood or Old Colony Rubber Co. from their goods, sending them out with no name on them." "No name" in large type. "And also placing a stamp with the words 'Independent Rubber Co.' on them; therefore be it resolved that as officers and members representing the labor movement of this country each delegate is hereby requested to bring the matter before his national, international, city central and federated labor unions in the hope that they will in no uncertain manner prove to this firm that their product is unfair and will not be purchased by organized labor and its friends. Committee reports favorably. Adopted." 7378 7379

I don't know whether you have any independent recollection about these, but as they appear here in the record do you doubt that they were passed? A. No.

Q. You put in this case on the 11th of July, 1908 an answer. I am not going to take the trouble to read it, did you not? A. I did. It was done by counsel. I don't recall just what it was, Mr. Davenport.

Q. Yes, but after consultation with you? A. Why, I presume yes; I don't remember now.

Q. Now at the convention of 1898 which you attended you served upon the Universal Label, I believe? A. Committee on Label. 7380

Q. Now I want for argumentive purposes hereafter, to call attention to this instance, which is related in the closing lines of the Convention of 1898 at which it appears you were voting on the nominees for President and Vice-President, Secretary-Treasurer and Fraternal Delegates. "President Gompers introduced Mr. Thomas H. West, who sang: 'Stick

7381 to your Union.' On motion it was ordered that the words of the song 'Stick to your Union,' by Thomas H. West, be published in the proceedings and that the words and music be published in the American Federationist.

"Stick to your Union, Words and Music by Thomas H. West, Kansas City, Mo.

"Dedicated to the A. F. of L."

Q. Do you recall that incident? A. I think so.

Q. Well, it is very short:

"I'll now relate a story, it happened years ago,
And the words a noble father said, which all of you should
7382 know.
His son had quit the workshop, with others of his trade,
They struck against injustice, a cut the firm had made.
His father, old and feeble, came to meet him at the door,
And listened to the story that his son related o'er,
About his shopmates' action, and what the firm had done,
The old man listened to it all, and thus spoke to his son:

CHORUS

Stick to your Union, lad, don't be a knave;
7383 Show every tyrant that you won't be a slave.
Obey your aged father; God Bless you now, my son:
Stick to your Union, 'till the strike is won.

The son was much affected—he grasped his father's hand,
Said he, we are united, and justice we demand.
Don't be alarmed about us, we never shall return,
Until the firm restores to us, the sum we justly earn.
The Union held a meeting that evening in their hall,
Each member was determined the union should not fall.
The old man to the platform by his son was gently led,
Who, 'mid great applause, repeated the words his father said:
7384 Stick to your union lad, don't be a knave.
Show every tyrant that you won't be a slave.
Obey your aged father; God Bless you now my son:
Stick to your Union 'till the strike is won."

"The strike was long and bitter the men refused to yield:
No traitors were among them as time at length revealed.
At last the firm relented and sent for them one day
And told them they'd decided to restore their former pay.
Of course, there was rejoicing, but that night the old man died:

Their joy then turned to sorrow, for he was the union's pride. 7385
They marched to do him honor, in silence to the grave.
Now inscribed upon his monument is this advice he gave."

Then follow the words of the chorus; do you recall that incident? A. I do.

Q. Now when you attended these conventions as delegate from the respective bodies, you attended as the representatives of the individuals who composed that body, did you not? A. No. I represented the United Hatters of North America.

Q. Well, and who were they? A. Comprising differ- 7386
ent locals.

Q. And who were they? A. Why, the organization itself as we understand it, as the officers.

Q. None of these are incorporated, are they? A. No.

Q. But the members of the organization, you represented, did you not? A. Why indirectly yes.

Q. Well, that is to say you were their proxy. They couldn't go in person under the scheme of government you had? A. That is true.

Q. But you went there as their representative? A. That is true.

Mr. Davenport: 7387

That is all.

CROSS EXAMINATION

Continued by Mr. Merritt:

Q. Do you know how many copies of the Journal were printed in 1902 and '03? A. I would say about four or five thousand. I am not positive of that, but to the best of my judgment.

Mr. Merritt:

Is there any objection to my going into this now? 7388

Mr. Beach:

None at all.

Mr. Merritt:

It is not cross examination, but I want to put this in the record.

Mr. Merritt:

Yes, I will read it in now. In the Journal of 1899, Treasurer's report, on page 9, it says "Two thousand copies of semi annual report printed." On page 11 "four thousand

7389 copies of Journal $47.75." Page 10 "printed Journal $48.00; expressage on Journal $5.11. Printing Journal September number, $47.75." I suppose these are all four thousand copies, probably? A. Well, the only way you could tell is by the size of the bill.

Mr. Merritt:

At that time your organization had a membership of something under 6,000 in 1899? A. No, I think you are wrong.

Q. Well, here in October, 1899, the membership—that is nine months later, was given as 5,871, so that you were print-

7390 ing about 4,000 journals for something under 6,000 members at that time? A. I had an idea that our membership was greater than that at that time, but the figures are correct.

Q. They are undoubtedly correct, Mr. Lawlor, aren't they? A. Yes.

Q. Now Journal for March, 1899. "Printing 4,000 copies Journal, $53.40." Journal for April, 1899: "Printing 4,000 copies Journal, $52.31."

The Witness:

Mr. Merritt, in reference to that I think you found later than the different officers were not being served so the amount

7391 was accordingly cut down while the book itself grew larger.

Q. Now, Mr. Lawlor, your recollection on some of these things is very hazy, and I guess, as a matter of fact the number of Journals actually printed was increased. Possibly the price increased, so I will go on and read the records: "Journal for April 1899." I read it. "Journal for May 1899, printing 4,000 copies of Journal, $53.72" and then on page 6 of the same Journal your membership appears as 5700. Now "Journal for July 1899, 4,000 copies of Journal, $68.60; Journal for October 1899, no record. Journal November, 1899, page 7,

7392 George J. Byron, Editor, printing Journal, $55.03. Journal December 1899, on page 7, printing Journal 4,000 copies, $56.50." Now coming to "Journal for February 1900" your membership had increased to something like 7,000 at that time and printing 4500 copies of Journal, $55.00. "Journal March 1900, printing Journals $137.32." That is probably for two months together, isn't it? A. Very likely.

Q. Probably about five thousand copies of the Journal I should judge from the bill wouldn't you? A. Sometime about that time I think we made a change in the book which made it more expensive, as you will see.

Q. Well, that wasn't 'till November, 1901? A. I don't know. 7393

Q. I am not sure about that. "Journal May 1900, statement that at the time this issue will reach a good many of our members the Convention will be in session. Treasurer's report printing Journal, $80.10. "Journal June 1900," on page 11, "$88.57. Journal September 1911," on page 2 "the question was brought up as to how many copies of the book of the recent convention should be printed; that refers to these proceedings "Plaintiff's Exhibit 3" from which we read Mr. Moffitt's report and other matter. "Motion was made that 5,000 copies be printed." The motion was carried, and your membership at that time was between 7,000 or possibly 7500 I judge. I find later in the same journal your membership is given as 7000, so you printed 5000 copies of that 1900 Convention Proceedings for a membership of about 7600, and on page 5 the President refers the readers of the Journal to his address to the Convention. On page 6 treasurer's report shows "Printing Journal $87.84." Page 7 "Membership 7600. Journal October 1900," on page 7 "Treasurer's report, printing journal $144.16." "Journal January 1901, Danbury News, printing Journal $84.50." "Danbury News Printing Journal $70.00." That means that the Danbury News Printed the Journals for you, isn't that correct? A. I didn't know that the Danbury News Printed the journal, but that is true very likely. 7394 7395

Mr. Merritt:

"Danbury News January 1901, printing Journal $70.00 on page 8. Danbury News Printing Journal $70.00. Journal August 1901, Danbury News printing Journal $91.50. Danbury News printing Journal $71.50. Danbury News, printing Journal $71.50. Printing Journal $79.50."

Mr. Merritt:

That is August 1901, "Journal, October 1901, printing Journal, $71.50. Printing Journal $71.50, printing Journal $70.00. Journal November, 1901, we present to the readers of the Journal this month a change in the appearance which we hope will meet with the approval of our organization, etc." That is the change you referred to? A. Yes. 7396

Q. "Journal, January 1902," it says "The effort through the columns of the Journal ought to assist in every way toward making this the most successful fair held by the hatters of Danbury." "Journal February 1902," page 4 "Beginning with the February issue of the Journal your President will manage the

7397 same and he very cordially invites the members in general to contribute an article once in a while in order that he may make the Journal an interesting sheet to not only the members of our organization, but to other members of organized labor in general, beginning with the March issue, the weekly reports of the work done by our agents on the road will be printed." And your membership at that time is given at 7986. On page 11, February 1902 Journal "Printing Journal $96.00. Printing Journal $71.50." Page 12 "Printing Journal $100.00. John Murphy, Editor, loss of time mailing and expressing Journal $22.30. Journal March 12," page 4, "I congratulate
7398 the management of the Journal on this month's issue. The report of President Moffitt on the Roelofs strike was very interesting to members of this district. Journal April 1902," page 5, says, "Report made by Mr. Patrick Connolley," who testified concerning the distribution of the Journal, etc. He reports as follows: "Our members are taking more interest in our trade journal since the inserting of reports of agents, editorials and an increased amount of news has been added and many other individuals say that they will endeavor to make future editions a success. Journal May 1902, printing Journal $109.00," page 18, "Printing Journal $136.25. Printing Jour-
7399 nal $161.50. Journal Sept. 1902, printing Journal $139.25," and various items of expressage on the Journal. "Printing Journal $174.50. Printing Journal $191.75," and your membership was given on page 10 as 8604. And the Newark makers write as follows: "The demand for the Journal has increased. They are asking for it, and therefore I am obliged to ask for 980 copies of the next and subsequent issues. In the Journal for November 1902 "Printing Journal $191.75" and items for postage and expressage. On page 10 "Printing Journal $21.50." On page 22, "Printing Journal $182.00. Journal Feb. 1903, number of members 9040. "Printing Jour-
7400 nal $279.10. Printing Journal $205.00."

Mr. Merritt:

"Journal for April 1903, printing Journal $190.50. Printing Journal $198.80. Printing Journal $222.00. Journal for August 1903 membership is described as 8994. "Printing Journal $175.20. Printing Journal $202.30. Printing Journal $170.50." And then just one thing more "Journal November, 1903, printing journal $160.25, and printing proceedings of Convention of 1903, $222.00." That is all I desire of this witness.

RE-DIRECT EXAMINATION

7401

By Mr. Mulholland:

Q. Mr. Lawlor, this Journal is always exchanged for Journals of various internationals?

Witness:

I think so.

Q. You were never the editor? A. I was never the editor.

Q. Then you never knew of these matters that have been referred to you by Mr. Merritt? A. No.

7402

Q. Had no knowledge of them whatever? A. No, only as they appear in print. I want to say that during the years that I was Vice-President I didn't know but little of the officers of the organization; I was working at the bench as a journeyman hatter.

Mr. Beach:

As to the following defendants, it is admitted on the record that they are chargeable with notice of whatever appears in the Journals of the United Hatters and the printed reports of Conventions of the United Hatters that have been admitted in evidence in this case; namely, William P. Bailey, who is, and has for a great many years, been secretary of the Finishers' Local Union in Bethel, Connecticut, and who attended Conventions of the United Hatters in 1896 and 1900; who was a delegate to the American Federation of Labor Convention of 1901; John W. Sculley, who was a delegate to the Hatters Conventions from 1896 to 1903, inclusive, that is 1896, 1900 and 1903, who was a delegate to the Convention of the American Federation of Labor in 1899, who was a Director of the United Haters from 1896 to 1900, and secretary of the local Norwalk Finishers from 1892 to 1912; Michael C. Griffin of Danbury, who was Vice-President of the Association of Hat Makers of Danbury in 1903, and afterwards and who attended the convention of the United Hatters in 1900 as a delegate.

7403

7404

The Court:

Now the defendants named do not take the stand as witnesses for the defendants. Is that acceptable to the plaintiffs?

Mr. Davenport:

Yes, Your Honor.

The Court:

You have no further witnesses today?

7405 Mr. Beach:

We have no other witnesses.

The Court:

The jury are excused until Wednesday at 10:00 o'clock, October 9th.

Wednesday, October 9th, 1912.
Morning Session, 10:30 o'clock.

Witness,

ALBERT F. YOUNG, JR.

7406 Sworn by Mr. Carroll:

The Clerk:

Your full name? A. Albert F. Young, Jr.

EXAMINED

By Mr. Beach:

Q. Will you kindly, Mr. Young, remember to talk loud so that all the jury can hear you and the court can hear you? A. Yes, sir.

Q. Now where do you live? A. Brooklyn, N. Y.

7407 Q. What is your business, Mr. Young? A. I am a certified public accountant.

Q. And how long have you been a certified public accountant? A. About two years.

Q. You mean that you are a public accountant certified by the proper authority of the State of New York as an accountant? A. Yes, sir.

Q. And you have had, I suppose, some considerable experience in the examination of books and bookkeeping matters? A. Yes, sir.

Q. And have you or not looked at the books of the plaintiffs in this case, D. E. Loewe & Co.? A. I have as to sales.

7408 Q. I refer particularly to the sales ledger? A. Yes, sir, I have.

Q. Now tell the jury in a general way how that sales ledger is kept; what it shows? A. Why, the sales ledger is accounts with customers who are charged with the sales made from day to day; these sales are listed in the sales book. I have checked the sales from the sales book.

A. I have checked the sales from the sales book and the ledger account; I spent about one day doing that, which I considered a fair day's work.

Q. You found the sales ledger substantially accurate? A. Yes, sir. 7409

Q. And you have taken the figures off that sales ledger as accurate? A. Yes, sir.

Q. And, as I understand you, they show from day to day the shipments made to each customer? A. Yes, sir.

Q. So that is it or not possible from that book to determine the amount of goods which were shipped to each customer in each month of the year? A. Yes, sir; it is.

Q. Now I will ask you whether you have compared, or not, the total business as per sales ledger which the plaintiffs did with their customers in the first five months of 1901, as 7410
compared with the amount of business which they did with their customers, according to their sales ledger, in the corresponding period for 1902? A. No, sir; I didn't but I did it for seven months; the first seven months, and the last five of each year.

Q. That is from January to July, inclusive, 1901, you compared with from January to July, inclusive, 1902; is that right? A. Yes, sir; that is right.

Q. Now will you give to the jury the figures of total sales from the sales ledger for the first seven months of 1901? A. You refer to those customers that I have listed? 7411

Q. No, I mean just the total; the total gross sales? A. Yes, sir; the first seven months for 1901 as taken from the ledger amount to $247,818. Now what is the next?

Q. The next is for the year 1902? A. The next year for the same period, the first seven months of 1902, $193,987-.62.

Q. Now what does that show? A. A decrease of $53,830.38; being the decrease for 1902.

Q. Of about what per cent—or exactly what per cent? A. 21.7%.

Q. Now I want to ask you this question—I am going to 7413
assume, for the purpose of this question, that the same business conditions which prevailed in the first seven months of the year 1902 would have prevailed in the last five months of the same year, if the plaintiffs' business had not been otherwise interfered with in any way, applying the same percentage of loss of business done in the last five months of 1902, what would the total business of the plaintiffs have been in the year 1902, if the same conditions had prevailed as during the

7413 first seven months? A. Well, I took the total sales for the year of 1901, which was $464, 353.36—

The Court:

Can't you get at this a little shorter?

Witness:

I took the total sales for the year 1901, which amounted to $464,353.36, and deducted 21.7% from this total amount, which gives me $363,589, as being the sales for 1902, assuming that they would fall off 21.7%. Now this figure of $363,-589.00 as compared with what the sales actually were, $305,-617, shows a continued loss of $57,972.00.

7414 The Court:

Now, Mr. Beach, if I understand that question correctly, you have assumed all of the conditions to be the same during the year, and it shows then a diminution of trade of that amount.

Mr. Beach:

Shows a diminution of trade of—what is your last figure?

A. Well, after taking off the 21.7—

The Court:

He asked you the last figure?

Q. Just give me the last figure? A. Oh, $57,972.

7415 Mr. Beach:

That we say is the total loss shown on plaintiffs' books for the year 1902.

The Court:

As to volume of business?

Mr. Beach:

As to volume of business. I don't mean loss of profit. I mean loss of trade which is not accounted for.

Mr. Merritt:

Do you really claim that?

Mr. Beach:

7416 Yes, we claim that.

Q. Now you have, at my request, examined the accounts of certain specific customers? A. Yes, sir.

Q. I might say, for the information of the court and jury, that these are the customers, as we read the evidence, concerning whom some testimony, no matter how slight, has been offered. For the purpose of saving time, I will put it this way: the list of customers referred to by the witness is as follows: Triest & Co.; Wechsler, Laufer & Co.; William P. Montague & Co.; W. E. Middlekauff and the Selmore Hat Co.; Delano &

Wheeler; Eli Keen's Sons; J. G. Worthley & Son; J. T. Asch & Sons; Moore, Smith & Co.; Joseph R. Gilleadeau; Denzer, Goodhart & Scheuer; Longley, Low & Alexander; Wiernik, Edelstein & Co.; The Gate City Hat Co.; Brown & Co.; E. R. Wessells; George P. Wells; Louis Klein & Bro.; T. D. Stokes & Co.; The Gauss, Shelton Co. and Gauss, Langenburg Hat Co., one succeeding the other; now have you or not taken from the plaintiffs' sales ledger the total sales made to those customers as they appear on the sales ledger for the first seven months of 1901? A. Yes, sir; I have. 7417

Q. What is that total?

The Court: 7418

You might just as well ask a leading question, Mr. Beach; you will get along faster by asking him if it was so much.

Q. Whether or not the total amount of sales to the above list of customers for the first seven months of 1901, as shown by plaintiff's sales ledger is $172,346; I omit the cents? A. Yes.

Q. Now have you compared the sales of the same customers for the first seven months of the year 1902? A. I have.

Q. And ascertained the total? A. Yes, sir.

Q. Whether or not the total sales to those same customers in the first seven months of 1902 amounted to $139,604.00? A. Yes, sir. 7419

Q. And the difference is how much? A. $32,742.

Q. That is the sales to those same customers were $32,000 and odd dollars less in 1902, for the first seven months than they were in 1901 for the same seven months? A. Yes, sir.

Q. And what is the percentage of difference? A. Nineteen (19%) per cent.

Q. So that in case of these customers that have been testified to the percentage of loss was slightly less than in the case of total business of the plaintiffs? A. Yes, sir. 7420

Q. Now assuming, Mr. Young, that that same percentage of loss in the case of these specific customers had been carried through the entire year, what would have been the total loss of these customers in 1902? A. $265,032, which is 19% less than $327,199.00, which was the amount for 1901 for the total year.

7421 Q. And what were the actual sales as appear by the sales ledger, to these customers, for the year 1902? A. $226,-920.00.

Q. That is, that represents does it a loss of $38,112 in sales which is not accounted for by the application of the 19%? A. Yes, sir.

Mr. Beach:

It will be evident to the court that we can't make this per cent. for the year 1903, because we have not the basis to go upon; and these figures relate only to the year 1902, and we will draw the best inference we can as to 1903. That is all.

7422 You can have the witness.

CROSS EXAMINATION

By Mr. Merritt:

Q. Are these gross or net sales? A. Gross.

Q. What were the total gross sales for the last five months of 1901? A. $216,535.36.

Q. You may leave off the cents? A. All right.

Q. What were the gross sales for the last five months of 1902? A. $111,629.

7423 Q. What was the falling off of business in the last five months of 1902, as compared with the last five months of 1901? A. $104,905.

Q. Now will you give me the amount of business done with this list of customers during the last five months of 1901. A. The total amount of all these customers for the last five months of 1901, amounted to $154,852.

Q. Then if you will give me the total amount of this list of customers during the same period in the year 1902? A. $87,316.

7424 Q. And what was the falling off of business with this list of customers during the last five months of 1902, as compared with the last five months of 1901? A. I haven't calculated that.

Q. Well, you can?

Mr. Beach:

That is a mere mathematical computation.

TheCourt:

Counsel will agree.

Mr. Beach:

I think it is $67,536, subject to correction.

Mr. Merritt:

That is near enough. Then I think the jury understands that that part of his testimony was based purely on hypothetical conditions. 7425

The Court:

Mr. Beach stated that.

Witness excused.

Mr. Merritt:

I will read a few matters, if I may, at this time, and I will read from the April, 1903, Journal; report of Frank Keegan, which I have not read.

Mr. Merritt: 7426

I am reading from page 365, Plaintiff's Exhibit 3, which is the Convention Proceedings of the United Hatters of North America for 1900: "The Committee that had been appointed to formulate rules to govern the publication of the Journal made their report, as follows: First, we recommend that the publication of the Journal be continued. Second, that this Convention elect an editor, and select the place of publication. Third, before any matter is put in print it must be submitted to an Advisory Board to be selected by the General Executive Board; that an effort be made to solicit advertisements in order that the Journal may be placed on a paying basis. Fifth, 7427 that the financial reports of the Secretary and Treasurer be published quarterly instead of monthly. The paper was amended by making the General Executive Board the Advisory Board. The report of the Committee, as amended, was adopted unanimously."

Mr. Mulholland:

We have one resolution which we desire to read, if the court please, from the report of the Convention of the American Federation of Labor held in Detroit in the year 1899, and this resolution was adopted on the 20th day of December, 1899, as follows, page 162: It has been referred to, I think, 7428 but up to this time has not been read in evidence: "The Committee recommend the adoption of the following resolution: Resolved, that all the names on the "We don't patronize list" of the American Federation of Labor be dropped. Resolved that this shall not debar the organization from renewing the application, and that an effort to adjust be made before the concerns can again be placed on the unfair list. Resolved, that National or International Organizations are strongly advised

7429 to have no more than one concern upon the unfair list at the same time."

Recess.

Mr. Beach:

Mr. Maher did not come, and we will put Mr. Lawlor back on the stand and use him for what we can.

Mr. Merritt:

Your Honor, we are perfectly willing that the defendants should read Mr. Maher's examination as it was given at the last trial, if they care to.

Mr. Mulholland:

7430 Well, we will put Mr. Lawlor on the stand now.

Witness,

MARTIN LAWLOR,

Recalled.

EXAMINED

By Mr. Beach:

Q. Now, Mr. Lawlor, do you know whether or not the United Hatters have any fund out of which any judgment in this case could be paid? A. They have not.

Q. And what power or authority has the Board of Directors of the United Hatters at the present time to lay an as-

7431 sessment for that or any other purpose? A. They have got the power to lay an assessment, but it must be ratified by a majority of the members—general membership.

Q. Another subject I want to speak of; mention has been made here of advertising the union label, and I want to show the jury the material that was distributed by the United Hatters of North America through their agents in the years 1900 to 1903 by the way of advertising, and I call your attention first to this placard, and ask you whether that placard was supplied to the agents and distributed through them? A. It was; yes, sir.

7432 Q. And I call the attention of the jury to it, that it is an advertisement of the label of the United Hatters of North America, and I offer it in evidence to be marked "Defendant's Exhibit C."

(Marked "Defendant's Exhibit C.")

Q. I call your attention to a sort of ornament or watch fob in the shape of a hat and ask you whether articles of that nature were distributed by the agents of the United Hatters in advertising the union label in those years? A. I am not quite sure of that; whether that year.

Q. Well, we won't have anything to do with it unless you are. I call your attention to a match box? A. Yes, sir. **7433**

Q. With the label of the United Hatters on it? A. Yes.

Q. And with some other printed matter on it, and ask you whether these match boxes were distributed by the agents of the United Hatters in those years in advertising the union label? A. They were.

Q. I will have that marked "Defendant's Exhibit D." (Marked "Defendant's Exhibit D.")

Q. Here is an aluminum sign; were signs of that character distributed by agents of the United Hatters in advertising the union label in those years? A. They were. **7434**

Q. I will have that marked.

(Marked "Defendant's Exhibit E.")

Q. Here is a celluloid sign, how about that? A. They were distributed also.

Q. At that time? A. Yes, sir.

Q. Here is a kind of badge of some kind? A. They were distributed too.

Q. Also with the union label on them. Here is a lead pencil with the union label; a celluloid cover; do you remember that? What thas distributed? A. It was. **7435**

Q. Here is a calendar, sort of perpetual calendar; whether or not calendars like that with the union label on were distributed by the agents? A. They were.

Q. Here is a little card with the label on it, and some advertising matter? A. Yes, sir.

Q. Were those distributed? A. They were.

Q. Here is a celluloid rule, with the representation of the United Hatters' Label on it? A. I think that was since the years.

Q. Well, we won't have anything to do with that. Tell the jury, in a general way, how extensively that material that has been called to your attention was distributed by agents in advertising the label? A. Why, they were bought in large quantities of five or ten thousand. That is the match boxes were got out in large quantities, I should say a hundred or two hundred thousand, and the other advertising matter the same way; usually bought in quantities of ten thousand in order to get the cheaper price; five or ten thousand. **7436**

1859

7437 Mr. Beach:

That is all.

CROSS EXAMINATION

By Mr. Merritt:

Q. Now, Mr. Lawlor, you had in the year 1902, two funds, did you not; one known as the national fund, and the other as the defense fund? A. We did.

Q. And they were kept in separate banks, were they not? A. No, in the same bank.

Q. But separate accounts kept of them? A. Separate accounts.

7438 Q. And those two funds were for two separate purposes, were they not? A. They were only kept separate in accordance with the rule regulating them in the constitution, but the defense fund was usually for advertising the label, and agents on the road; the regular fund was for ordinary running expenses of the association.

Q. Now that is just the point I want to bring out; as a matter of fact the defense fund was used for agents on the road, but your national fund was used for advertising; wasn't that the situation? A. Not entirely, for the law provided that—

7439 Q. Well, I am talking now about the practice; isn't that almost exclusively the practice? A. Well, to an extent it was, but not exclusively or anywhere near. Mr. Maher when he paid out money usually paid it out of the defense fund; when the Secretary paid out money he usually paid it out of the regular running expense account; regular fund.

Q. But it was very seldom that the Secretary paid the agents, wasn't it? A. Yes very seldom he paid the agents, but for advertising matter and things of that kind the Treasury funds paid it.

7440 Q. That is what I am getting at; as a matter of fact, that defense fund was used for strikes and agents on the road and things of that kind? A. That is right.

Q. But wasn't used for advertising? A. I think that the law provided that to be used for advertising the label, strikes and lockouts.

Q. As a mater of fact, its wasn't used for that purpose? A. Not in its entirety, no, but there were other cases when it was.

Q. Well, then, if we don't agree on that matter we will have to go into it. Now I want to read from the Treasurer's report which appears in this old record, which I understand it is consented I may read from, and this is from the defense fund? 7441

Mr. Beach:

What page?

Mr. Merritt:

Page 2625. In 1900 the following items:

Mr. Beach:

Is there any objection to the witness using a copy? That he may read it with more facility. 7442

Mr. Merritt:

No. In the middle of the page there, you find these items included in the disbursements to Mr. John Moffitt in 1900: "May 20, $200; May 29th, $1,000; June 12th, 1901, $100.00; June 23rd, 1901, $500.00; August 7th, 1901, $500.00; September 9th, 1901, $500.00; October 14th, 1901, $500.00; November 11th, $500.00; December 30th, $500.00; January, 1902, $500.00; March 12th, 1902, $500.00; April 23rd, 1902, $500.00; May 26th, 1902, $500.00; July 8th, 1902, $500.00; July 25th, 1902, $100.00; August 7th, 1902, $100.00." Now these items are all entered under the name of Mr. Moffitt, although after the first items were entered under the name of John A. Moffitt "Roselofs strike." They were proper matters to come out of the defense fund, were they not? A. They were. 7443

Q. Mr. Moffitt furnished the report for the Roelofs strike, didn't he, in the same way that he did for the Berg strike? A. I don't recall. If it is entered you will find it in the books.

Q. I haven't been able to find it. I thought perhaps you would know? A. My recollection is that he did, but I am not positive about that. 7444

Q. You wouldn't know any way in which we could get at it? A. Unless it is in the record; that is the only record I know.

Q. In the Journals, do you mean? A. Journals, or semi annual reports at that time.

Q. Those are the only records you have? A. That is all.

Q. Now that the books have gone they are the only records that are left on that point? A. The old ledger

7445 is gone; that is all, the old ledger. That is the only record we have of any report or anything of that kind. The reports wouldn't appear in that old ledger anyway.

Q. Well, Mr. Maher stated that there were separate reports for the Roelofs matter, in the same way that there was for the Berg matter, and I have not been able to get it; and I understand you to state, at least, that it is not on file in your office? A. It is not on file in our office.

Q. Now coming down to the later items, I am going to read certain items, and they are all of them advances made to the agents, as I understand it, and all of them
7446 advances made from the defense fund, beginning with April 12th, 1901, I believe; this is on the following page? A. I have it; yes, sir.

Q. "William Hennelly, $100.00; T. D. McCarthy, $25.00; T. D. McCarthy, $119.35."

Q. "T. D. McCarthy, $100.00; William C. Hennelly, $100.00;" these are all in April. "May, William Hennelly, salary and expense $50.00; William C. Hennelly, salary and expense, $100.00; June, P. F. Kennedy, $41.70; William C. Hennelly, $100.00; P. F. Kennedy, Agent, Expense $40.00; William C. Hennelly, $100.00; Felix O'Haire,
7447 Agent, Expense $100.00; July, William C. Hennelly, $100.00; F. P. Kennedy, $65.45; August, William C. Hennelly, $100.00; F. O'Haire, $100.00; William C. Hennelly, $100.00; F. O'Haire, $100.00; William C. Hennelly, $100.00; James Murphy, $100.00; September, James Murphy, $100.00; F. J. O'Haire, $100.00; Daniel Kelly, $100.00; William C. Hennelly, $100.00; James Murphy, $100.00; William C. Hennelly, $100.00; October, Daniel Kelly, $100.00; Felix O'Haire, $100.00; Daniel Kelly, $100.00; Felix O'Haire, $100.00; William F. Hennelly, $100.00; James Murphy, $100.00; Daniel Kelly, per Mrs. Kelly, $18.00." Here is "No-
7448 vember, Daniel Kelly, per Mrs. Kelly, $18.00, ditto $18.00; Felix O'Haire, Agent, $100.00; William C. Hennelly, $100.00; Daniel Kelly, $18.00; James F. Murphy, $100.00; Felix O'Haire, $100.00; William C. Hennelly, $100.00; Daniel Kelly, $100.00; Daniel Kelly 18.00; Daniel Kelly, $200.00; Daniel Kelly, $18.00." Now, I call your attention to this item which was found in the same book, which is practically the only time that these words appear: "Martin Lawlor, Advertising Label, Buffalo, $145.23;" that

report at that time— A. The Word "Buffalo," don't 7449
appear here does it?

Q. Yes, it appears here; probably I have skipped the parenthesis? A. All right go on.

Q. That report was apparently audited by Michael Griffin, the defendant in this case, on January 11th, 1902: "December, 1901. Daniel Kelly, $36.00; James Murphy, $100.00; William C. Hennelly, $100.00; William C. Hennelly, $100.00; Daniel Kelly, $36.00; January 1902; James Murphy, $100.00; Daniel Kelly, $36.00; Martin Lawlor, advertising label in Indianapolis, $100.00; Felix O'Haire, $200.00; James Murphy, $100.00; William Hennelly, 7450
$100.00;"

Q. Now aren't those two items that I have read concerning advertising the only two items that appear concerning advertising? A. Why, I think that you haven't all the items that appear on the ledger, or only a part of it that was included in agents, and that there must be a great deal more items on the ledger during the periods covered than you have mentioned here.

The Court:

Why do you think so? A. Because I think there was more money paid out in that period. 7451

The Court:

Have you examined the records to see whether there was any more? A. I have not, Your Honor.

The Court:

It is merely a matter of impression? A. That is it.

Q. Now, just let me see if I can't straighten out our on the matter. If you examine the reports of the Treasurer in the Journal from the National Office, you will find, I think, that they are full of statements concerning the advertising of the label? A. That is true.

Q. Well then, what makes you think there were any 7452
more items concerning the advertising that came from the defense fund? A. Because I think that all of the items that Mr. Maher paid for advertising the label he charged up to the defense fund, and Mr. Phillips, all the items that he paid out he charged up to the regular fund.

Q. Now, as a matter of fact, Mr. Moffitt made a financial statement of the Roelofs trouble, did he not? A. He did—oh, the Roelofs?

Q. The Berg trouble anyway? A. Yes.

7453 Q. You don't know about the Roelofs? A. I don't recall.

Q. And that statement was of the expenditures that he made in connection with the Berg case, wasn't it? A. It was.

Q. And it was only in his capacity as the man who had charge of the Berg fight that he had power to make this in regard to these expenditures, wasn't it? A. That is right.

Q. Now in this financial statement, it amounts to $10,000 or $12,000 through the agents on the road? A.
7454 No, I think it is higher.

Q. Well, let me see; call it seven or eight then— A. Six or seven I think is my recollection of it. I am not positive of that; you have the figures there.

Q. There is six thousand, there is eighteen hundred; that would be seventy eight hundred, and the salaries two thousand more,—nine thousand, and there are some items here which might very well come out for all I know, but call it eight thousand? A. But that was for strike benefits in the District.

7455 Q. Oh, no; let's get this straightened out. The strike benefits don't appear in these items? A. It couldn't be eight thousand for agents, because we only had two or three at that time. Here in this $6,000 item here is "James P. Maher, Treasurer," the first item. The second item is "Maher, Treasurer," and "John Horrigan, Treasurer of the Orange Association for strike benefits." The next item is for strike benefits.

Q. How do you reconcile that with the fact that there is a specific item here for strike benefits? A. Well, that is the same injected over here; that is a tabulation of it, as I understand it.

7456 Q. Let's see if you are right about that? A. Yes, "John Horrigon, Treasurer."

Q. That corresponds with that item there? A. Yes.

Q. And it is not part of this strike benefit $7221.00? A. That is Orange District.

Q. Yes, it isn't part of this strike benefit, is it? A. Not as it is here, but I can see John Horrigon; it is strike benefits.

Q. You don't know what he did with the money, do you? A. He was paymaster in paying the strike benefits.

Q. You don't know what he did with the money? 7457
A. I know he paid it to the members at that time.

Q. Do you know that he paid it over to the members on strike? A. I don't; I know he got it for that purpose.

Q. There is an item of $7221, under the head of "strike benefits," and another item at the end of the report says "strike benefits"? A. Well, I'll tell you at that time that he paid Horrigon we had only two or three agents at that time.

Q. Just answer my question? A. All right.

Q. There is only one item "strike benefits, $7221"? 7458
A. Where they bring it down to tabulated form; here is "strike benefits." The great majority of the charge was to Horrigon and Stellpflug. That is positively for strike benefits.

Q. Well, I will place the matter before the jury and let the jury draw their own conclusions? A. If you will let me look over that book; I just looked at it as far as I saw it.

Mr. Merritt:

You can leave it until after recess.

Q. As a matter of fact, were there any other agents 745
on the road at that time than those mentioned in the report of Mr. Moffitt? A. That is all that I recollect of.

Q. Then it is a matter of fact that whatever moneys were paid to agents at that time were to be chargeable to the expense of conducting this fight against Berg as conducted by Mr. Moffitt, and not as chargeable to advertising for the label; isn't that true? A. It is not; while they had largely to do with Mr. Berg, the agents, their general work was, and was before the trouble broke out, general advertising.

Q. You have testified, Mr. Lawlor, that Mr. Moffitt's 746
only authority for incurring any of these expenditures was his authority as being authorized in charge of the Berg fight? A. He always had charge of the agents.

Q. You testified as I stated, didn't you? A. I said that was his authority when paying out money; he had charge of the finances at that time in Orange and the money that came into Orange.

Q. How do you reconcile that statement with the fact that this report is in connection with the Berg fight

7461 only? A. Because Mr. Moffitt made that report rather than the financial officer, Secretary, and just at that time Mr. Moffitt wanted to make the local organization furnish the money; that is, the different locals to furnish the money to carry on the Berg fight, and for the general advertising.

Q. These various men who presented these reports testified that that was the report of expenses in connection with the Berg fight? A. As well as the general work of agents who were out at that time; that was all we had; some two or three or four. Their names are there.

7462 Q. Now you knew at that time, didn't you, that the agents were particularly instructed to follow up the Berg hats? A. I do when they were in any vicinity where Berg hats were sold.

Q. Is that the extent? A. That was the extent.

Q. Don't you know that it has been the practice of your organization to ascertain where the goods of certain foul manufacturers were being sold, and then direct the agents to go particularly to those customers? A. Where our men were working in the factory and dealers would take goods from the factory, our men working in the fac-

7463 tory were familiar with the customers of Mr. Berg or of other retailers anywhere.

Q. And they supplied that information to the organization? A. Why, the organization would naturally know it any way from the members working there.

Q. Just as you got it from Mr. Brady who worked in Mr. Loewe's factory? A. I don't know anything about getting it from Mr. Brady.

Q. You knew that Mr. Brady did that and that his wages were paid by your organization? A. I heard something of it, that is all I knew of it.

7464 Q. You knew, as a matter of fact, that it was the practice of your organization to obtain information concerning the customers where shipments were being made, and to send your agents to these particular points? A. It was always the practice of our organization, Mr. Merritt, long before the Berg fight, to know where union hats were sold, and to know where non-union hats were sold, and our agents would try to put the label where the most foul hats were being sold.

Q. You are familiar with the practice as set forth in this statement from Orange "Being in possession of the all important information in matters of this kind as to where shipments were being made from the Berg factory enabled us to send out missionaries to the following central localities, etc" mentioning the cities in different parts of the country; that was in accordance with the practice, was it not? A. I heard that statement made in the Convention. 7465

Q. Well, you knew it was the information obtained concerning shipment of goods, and often attempted to bring about the cancellation of orders before the goods reached the merchant, didn't you? A. I didn't. 7466

Q. Well, now, here is a report in your Journal, which I presume you will recognize when you hear it. After telling of the circulars that were being sent out in the country to the different unions, asking them to call on those customers who dealt in foul hats, and represent to them that labor unions would not do business with them if they dealt in foul hats, the Journal goes on to say it would be possible for any man to do the effective work that is now done by our communications, for they reach all sections of the country at the same time, thus the unions are notified before the goods are shipped, and frequently they are able to induce the dealer to countermand the orders? A. I don't quite understand your question in regard to that. 7467

Q. My question was that you knew that it was the practice of your organization to notify the members of the different central labor unions where the goods were going and to call on a given customer and ask him to cancel an order? A. It has been the policy of our organization as long as I know it or have been familiar with it that is not to ask for concellation, but to request merchants to discontinue handling non-union goods; but our agents have been particularly instructed, I know, since I had anything to do with it, and I think before— 7468

Q. Hold on a moment, I am glad to know that you have had something to do with the agents; when have you had anything to do with them? A. Why, since I have been Secretary.

Q. When was that? A. 1904.

7469 Q. Then we are not permitted to go into it. Now let's see if you recall this statement which shows that your organization was following up these particular shipments and interviewing customers concerning them. This is in connection with the Roelofs matter: "Shanfarber used to handle the R. Goods, but he showed me a few he had left in his window marked $1.98 to get rid of them, and said he did not buy any this spring and was not going to. Of course, I told him I was pleased to hear that he had decided to throw out the scab goods. I learned from your letter this week that three dozen have been shipped to him since I left Columbus. The son of a Dutchman!" A. Whose letter is that.

7470

Q. This is a letter from one of the agents? A. Whose letter did he have reference to?

Q. To Mr. Moffitt's letter; he is writing his communication to Mr. Moffitt as agent, under date of May 17th, 1902, and the agent is James Byrne, and he says "I learned from your letter (Moffitt) that three dozen have just been shipped to him." A. That might be true. I don't know anything about it, Mr. Merritt. I remember seeing such a letter in the Journal.

7471 Q. Now Mr. O'Haire writes from Knoxville, Tenn., in July 1902: "Mr. John A. Moffitt, Editor, I arrived at Knoxville on the 7th inst., and working under your instructions called upon the several parties mentioned in your communication." So it is true, is it not, that your agents were not acting at random, calling on dealers generally, but they were being directed to call upon particular customers who handled the goods of particular manufacturers? A. That was only a very small part of their business. You will see their business was general advertising and transact the labor organization's business.

7472 Q. You don't mean to contradict the record do you? A. I do, if that is the record, what you put in, to say that the work of the agents was entirely boycotting.

Q. What do you know about it outside of the record, first? A. I knew as far as the work of the agents was concerned, in a general way, as I heard it outlined by the General Executive Board, but the Individual action of Mr. John Moffitt, or the agents, I knew nothing of it except as I saw it in the Journal, but I know that the agents were for general work.

Q. But you turned that over to Mr. Moffitt? A. 7473
Mr. Moffitt by the General Executive Board had supervision of it at that time.

Q. You turned it over to him with full knowledge of what was in the record? A. I didn't have but very little idea of what was in the record; I told you I thought it was exaggerated. I don't think the agents done half the work they claimed in the record, and I don't think Mr. Moffitt done half the work that he claimed he done.

The Court:

Mr. Witness, you mean that this money that was 7474
paid out to the agents for the time spent by them was principally for advertising and not boycotting? A. Yes, sir.

The Court:.

And do you mean to go further and say that they did not boycott? A. No, I don't, Your Honor; I mean to say that when we—

The Court:

Did they boycott? A. Why, I think they did in the Berg and Roelofs cases.

The Court:

And you knew it? A. I knew something of it; yes, 7475
Your Honor, I did.

The Court:

I suppose this cross examination now relates simply to the matter of degree.

Witness:

I might say just to qualify what I said to Your Honor that at that time we thought we had a perfect right to go to merchant, or have them go to a merchant—

The Court:

I wasn't asking you about that at all. I was just 7476
asking you what the fact is? A. Well, that is just the answer.

By Mr. Merritt:

Q. It was true, wasn't it, that one of the policies of your organization was as far as possible to prevent non-union manufacurers getting started in doing business? A. Our policy was to increase the sale of union goods.

The Court:

Now, you listen to the question, and answer it.

7477 Q. Wasn't it your policy to prevent non union manufacturers getting started in business? A. It was not.

Q. At the 1900 Convention you had a stenographer, had you not? A. We had in the early part of it.

Q. And he reported the debate which took place in the early part of the convention? A. Yes, sir.

Q. And you made remarks there? A. Yes.

Q. Now let me read from your remarks: "Reading has been the home of cheap labor. First one manufacturer getting in there started to make cheap hats at the cheapest of prices and cheapest of conditions. The con-
7478 sequence was that he grew and prospered. Nobody disturbed him. I believe if $500 had been spent by this organization when Marshall first moved to Fall River he would not be in business today. With his few hats and little capacity in turning out hats $500 of this national organization would have wiped him out of existence"? A. What I meant by that is if we organized men in the early stages—

The Court:

What is the question?

Mr. Merritt:

7479 The question is if it was not the policy of the organization, and his own policy, and that of the officers of the organization to prevent non-union manufacturers getting started? A. As far as that goes, we aimed to have them unionize the factories, and if possible to start him as a union factory.

Q. And if possible prevent a non-union factory from doing business, wasn't it? A. Why, as far as organizing the man is concerned; in no other way.

By the Court:

7480 Q. Didn't you go in different states, did you know of its being done, to interfere with the people that traded with a non-union man or corporation? A. You mean me individually?

Q. Well, your agents that you sent out in the field? A. Why, they asked merchants to only handle union goods, or to—

Q. That doesn't answer my question; please answer it? A. Just say it again, your Honor, so that I can get it.

Q. Didn't they go into other states and go to the dealers with the man running the non-union factory and labor with them not to buy of and deal with the man who was running that non-union factory? A. They did. 7481

By Mr. Merritt:

Q. Now, as a matter of fact, Mr. Lawlor, you knew, did you not, that the Pennsylvania State Federation of Labor had put a Philadelphia jobber on the unfair list for dealing with Mr. Loewe? A. I think I heard it. Was it in the record? I heard it or read it somewhere.

Mr. Merritt:

Now I ask the indulgence of the court, and I won't be very long. I would like to read this from the Journal for April 1903. Report of Frank Keegan, Secretary of 18, on page 2 "The delegates from locals 18 and 19 to State Federation of Labor Convention have returned, and they feel sure that they done some good in the interest of our label. They had a certain jobbing house in Philadelphia placed on the unfair list which continues to buy hats from the unfair concern at Danbury; and they also done other work in the interest of our organization." 7482

This is the record which you say you read? A. I don't recall reading just that, but I presume it is there. 7483

Recess until two o'clock.

Afternoon session, Wednesday, October 9th, 1912.

MARTIN LAWLOR,

on the stand.

CROSS EXAMINATION

Resumed by Mr. Merritt:

Q. Mr. Lawlor, let me read to you from the Journal for September 1902, on page 21: 7484

"Philadelphia, August 9, 1902.

Mr. J. A. Moffitt, Editor.

Dear Sir: On the 28th ult. there was a joint meeting of Locals Nos. 18 and 19 to hear the report of National President Moffitt on the 'Roelofs' strike. It was the largest meeting of Hatters ever held in the City of Philadelphia. The hall was packed to the doors. The National President who was accompanied by Vice President Lawlor, gave the meeting detail reports of all that happened

7485 during the strike, which was very interesting. The National President's speech was voted to be one of the best ever heard at a Hatters meeting and was very enthusiastically received. Vice President Lawlor said he was unable to add anything to what the President had already said, but wished the Hatters of Philadelphia success and happiness in their new factory. There was a motion made and unanimously carried to ratify President Moffitt's report. After three rousing cheers were given, the National Officers, the meeting adjourned. Fred Miller, Secretary of Joint Meeting; Martin Williams, Chairman." Do you re-
7486 member that? A. I do.

Q. You were there at the time? A. I was.

Q. This is the John Moffitt who made this report, whose statements you claim were exaggerations? A. Yes.

Q. You voted at every convention, did you, to adopt Mr. Moffitt's reports? A. I have.

Q. And the same reports which you claim were exaggerations? A. Yes.

Q. Did you find out for me approximately how much was paid to agents in this financial report of the Berg
7487 fight? A. I did.

Q. What did you make it? A. $4,578.83.

Q. What agents were operating in New York along toward the end of 1902 and beginning of 1903? A. I don't recall.

Q. Don't you recall Mr. O'Haire was working in New York City? A. No, I don't think he ever worked in New York City.

Q. You were in New York at that time? A. What time?

Q. 1902, the latter part? A. No, I was not.

7488 Q. Could you tell me where the different agents were operating? A. I could not. The only thing I recall is what I read in reports of it now.

The Court:

Anything further, Mr. Beach?

Mr. Beach:

No, your Honor, we rest.

Defendants rest.

Mr. Merritt:

Your Honor, we now offer to read the testimony of

James P. Maher.

The Court:

Proceed. The whole of it?

Mr. Merritt:

We will only read a part of it. Mr. Maher was called as a witness by the defense at the last trial, and we are now going to read his testimony.

Mr. Davenport:

Or portions of it.

Mr. Merritt:

Portions of it. This is on the direct examination by Mr. Beach.

"JAMES P. MAHER

Sworn by Mr. Carroll.

DIRECT EXAMINATION

By Mr. Beach:

(Q.) Where do you live, Mr. Maher? (A.) In Brooklyn, N. Y., at the present time.

(Q.) You used to live in Danbury? (A.) Yes, sir.

(Q.) When did you move to Brooklyn, do you remember? (A.) In 1904.

(Q.) What is your present connection with the United Hatters of North America? (A.) National Treasurer.

(Q.) How long have you been National Treasurer? (A.) About 10 years I guess.

(Q.) What, if any, connection did you have with the Local Union in Danbury before you left there? (A.) I was Local President there of the Union, the Hat Makers.

(Q.) How long were you president of the Hat Makers Union in Danbury? (A.) Since 1897 up to, I think, it was 1900.

(Q.) About those dates, Mr. Maher, somebody has said you were president of the Makers in Danbury in 1902 at the time of this Loewe strike. (A.) Yes, I was, I have got that wrong.

(Q.) Well, fix it up with reference to those dates and tell us when you ceased to be president of the makers association in Danbury? (A.) I think it was 1904; I won't be positive, it was about that time.

(Q.) About the time you moved to Brooklyn, wasn't it? (A.) Yes, a short time before that.

7493 (Q.) Then in 1902, and for some time, you had held the double office of President of the Makers Local Association in Danbury, and Treasurer of the National Association, is that right? (A.) Yes, sir.

(Q.) And what conventions of the United Hatters of North America have you attended? (A.) I have attended every one since the amalgamation in 1896, with the exception of 1900 and 1907.

(Q.) Well, that only leaves 1903 and 1896? (A.) I was at the 1903 convention and 1896; that is about the only ones I went to as a delegate.

7494 (Q.) Now about the convention of the American Federation of Labor, Mr. Maher; what conventions of the American Federation of Labor have you attended? (A.) I have attended one in Detroit, Michigan, San Francisco, Louisville, Ky., Boston, in Denver and in Toronto, Canada."

Mr. Merritt:

Unfortunately I have not been over this testimony with this matter in view, but I will save time by a few delays from time to time.

Mr. Davenport:

7495 Come down to the cross examination, that is what you want to read. I suppose you want to ask him about that meeting down there, don't you, at White Street?

Mr. Merritt:

Yes. The next is on top of page 2538 of the old record.

"(Q.) Well, now I will ask you whether or not, when you went to Mr. Loewe first, you went under instructions of the General Executive Board? (A.) No, I did not.

(Q.) You went on your own responsibility? (A.) Yes, sir.

(Q.) Had no conversation with Mr. Moffitt? (A.) Oh yes, I spoke to him about my conversation.

7496 (Q.) Before you went? (A.) Not before I went.

(Q.) Then you didn't have any conversation with any one, or any of the officers about going there before you went? (A.) Why, I didn't make that a rule in any case.

(Q.) And that is the fact in this case, isn't it? (A.) That is the fact.

(Q.) You reported back to the Board what you had done, didn't you? (A.) Yes."

Mr. Merritt:

This is referring to the meeting of 1900 with Mr. Loewe.

"(Q.) What did you tell them? (A.) I told them of going to Mr. Foley, about getting a letter of introduction and going to Mr. Loewe in the factory and the subsequent meetings." 7497

. . . . .

"(Q.) Reading from those minutes, Mr. Maher, I as follows: Treasurer Maher made a statement to the Board concerning some work in which he had been engaged. It was decided that he continue on the same lines, and get more details if possible, and report back to the Board. Can you state now whether or not that related to the Loewe matter? (A.) I can't say positively whether it did or not.

(Q.) What is your best recollection? (A.) There has been difficulties in the factories there of different natures, for instance, manufacturers, etc. 7498

(Q.) I understand there might be other troubles, but reading from the minutes of December 1, 1900, it may throw some further light on it. Treasurer Maher gave the Board some information in reference to the interview that took place between him and a certain manufacturer. Motion made that the matter be referred to the President with full power. Does that suggest the Loewe matter as matter coming up? As a matter of fact, those two reports cover the time when you visited Mr. Loewe, one is before and one is after, according to Mr. Loewe's testimony. (A.) Well, I can't say positively. Mr. Moffitt has had other business there that was reported to him by me, I won't say for sure. 7499

(Q.) I find constantly here reference to going into executive session; one statement here in the minutes I could turn to, they went into executive session concerning the unionizing of factories. Here is a report of acting in executive session. (A.) That I couldn't say. I don't take the report."

Mr. Beach:

What is meant by that?

Mr. Merritt: 7500

That meant he could not say whether there were any reports of that kind.

"(Q.) I find under the minutes for March 5, 1901, on page 4 of the Journal for April, 1901, a statement of a meeting being held in Danbury, and then the next column 'March 6th, 1901. The board met at 9 A. M. at the Groveland Hotel, Danbury, Conn., on the above date. All members present.' Then appears the statement, 'Question of taking some action in reference to a non-union hat manufacturer was considered.

7501 Action was deferred for the present.' That is in the forenoon of March 6, with reference to Mr. Loewe, wasn't it? (A.) I couldn't say for sure.

(Q.) Well, I guess the afternoon statement will make it pretty sure. 'The board took a recess at 1 P. M.. In the afternoon the session was mainly taken up with the interview between the Board and a certain non-union manufacturer in reference to the unionizing of the factory.' (A.) I would say that was Mr. Loewe.

(Q.) And the matter was discussed in the morning session, wasn't it? (A.) I won't be sure about that, but if
7502 it refers as you say, why I will agree that was Mr. Loewe.

(Q.) You discussed the matter in the morning session and then telephoned Mr. Loewe, didn't you? (A.) Yes, I believe we did.

(Q.) That was over a year and a half before this strike took place that the Board of Directors or the General Executive Board showed this intention and desire to unionize Mr. Loewe's factory, isn't that true? (A.) Why, it was a year and a half afterward before it was reported to the Board of Directors.

(Q.) You came to Mr. Loewe in November, 1900, and
7503 then you left him for a week or so, and then you came back, didn't you, according to this testimony? (A.) I left him for a short time, but I think I probably met him only once in the factory. I didn't come back. I called him up and asked him to meet me again to know his decision, to find out what he thought of the proposition.

(Q.) You only called at the factory once? (A.) I think so.

(Q.) Sure of it? (A.) I won't be positive, but that is my recollection of it.

(Q.) You told him you were going to the convention
7504 of the A. F. of L.? (A.) Yes.

(Q.) Did you get the letter from him that he wrote you? (A.) I got one letter from him.

(Q.) What letter was that, Mr. Maher? (A.) It was the letter in reference to the subject of unionizing his factory.

(Q.) Was it a letter written after your interview in March, 1901, in the bedroom of the Groveland Hotel? (A.) I couldn't say.

(Q.) Would you know the letter if you saw it? (A.) I would not. It might refresh my memory if you have the letter or a copy of it. 7505

(Q.) Showing the witness Exhibit 99F, dated April, 1901? (A.) This is quite a long letter and I would like to look over it all.

(Q.) Will you take time to do it? (A.) Can I?

(Q.) Yes."

Mr. Merritt:

Then there is a recess.

Now I want to identify that letter here.

Mr. Davenport:

It was Exhibit 99F in the old case, but the tail end of the letter identifies it. 7506

"(A.) Yes, I believe I received a letter something of that kind. There is some things in there that calls to my mind.

(Q.) To the best of your recollection that letter came to your attention? (A.) Yes. I don't remember all of it, there is so much of it there. There is or two things, possibly three, that recalls it to my mind.

(Q.) At the close of this letter I find the following, 'Firmly believing that we are acting for the best interests of our firm, for the best interests of those whom we employ and for the best interests of Danbury by operating an independent, open factory, we hereby notify you that we decline to have our shop unionized, and if attacked, shall use all lawful means to protect our business interest.'" 7507

(Q.) If you were not willing to have the union men work in the factory of a man that wasn't willing to be unionized, why didn't you call them out then? (A.) I didn't have the power.

(Q.) And you said you didn't have any power July 25, 1902? (A.) I didn't call them out then.

(Q.) Why didn't you take the same action in 1901 that you did in 1902? (A.) I didn't have any authority. 7508

(Q.) Why didn't you take the same action after you got that declination from Mr. Loewe in 1901 that you did July 24, 1902? (A.) I can't just tell you why I didn't.

(Q.) You don't know any reason? (A.) No.

(Q.) Wasn't it because the Roelof's trouble was on your hands? (A.) Not that I know of.

(Q.) You haven't any explanation to offer? (A.) I don't see there is any explanation I can offer.

7509 (Q.) You testified, didn't you, that the reason you gave the notice of a meeting and had the men come down in 1902 was that you and Mr. Barrett thought you better tell them that they better not work in a factory that wasn't willing to run union? (A.) I told them to tell the men to come down to that meeting. The object was to explain to them what was being agitated around town, and the efforts in the Loewe case, about the organization, and explain to the men what was being agitated.

(Q.) What was being agitated around town at that time? (A.) Why, the unionizing.

7510 (Q.) That was agitated around town before the strike, was it? (A.) It was talked around town.

(Q.) You talked it with people? (A.) Not very many.

(Q.) But it was being agitated there around town? (A.) I have heard men in the factory, union men in the factory, wanted to know whether there was any success, they wanted to know if there was any chance of working in a union factory there.

(Q.) Can you name any union men who spoke to you about unionizing Mr. Loewe's factory in 1900? (A.) No, I cannot.

7511 (Q.) 1901? (A.) Well, I can't remember anything in that reference.

(Q.) Or prior to the strike? (A.) I can remember in 1901 and in 1900, a union man that spoke to me about it.

(Q.) One man? (A.) Yes.

(Q.) What was his name? (A.) Mr. Foley.

(Q.) Is he the only one you remember? (A.) I might have spoken to one or two others, but I don't know.

(Q.) He is the only name you can recall now? (A.) He is the only one.

7512 (Q.) What is Mr. Foley's first name? (A.) William.

(Q.) Was he working in Mr. Loewe's factory? (A.) Oh, no.

. . . . . (Q.) When was it he went out of office? (A.) That was about 1897.

(The Court):

I thought you asked him if he remembered any man in Loewe's factory? . . . . .

(A.) I can't name them.

(Q.) I was just asking if you can name them? (A.) I can't name them, I can't remember the names. 7513

(Q.) Was Mr. Foley running a saloon in 1902? (A.) He was.

(Q.) How did you spend the 24th day of July, 1902? (A.) I couldn't tell you.

(Q.) You were in Danbury part of the day, weren't you? Were you in Danbury the whole day? (A.) I don't remember the 24th, where I spent it.

(Q.) Do you know where you spent any of the preceding week? (A.) No, I couldn't tell you.

(Q.) Do you know whether the Board of Directors met at any of those dates? (A.) I couldn't give the dates and I said it in the beginning I don't remember them. I haven't got them committed to memory." 7514

Mr. Merritt:

Now on page 2548, after telling about reserving the use of the hall for the meeting.

"(Q.) You say the meeting was for the purpose of simply discussing this matter with the men in Mr. Loewe's factory? (A.) Yes, that was my understanding of it.

(Q.) When did you usually hold your meetings of the local associations? (A.) Hold them now, I believe, the second Thursday of the month. 7515

(Q.) When were you holding them then? (A.) I believe the first Thursday of the month.

(Q.) Once a month? (A.) Yes.

(Q.) What time of day? (A.) In the night.

(Q.) So as not to interrupt the men in their work I suppose? (A.) That is right.

(Q.) If you called out these men to discuss that matter, why did you call them at the beginning of the business day? (A.) Why, to get them down there in the day time.

(Q.) Why didn't you call them in the night as you usually did? (A.) Not in them cases we don't call them at night. 7516

(Q.) What do you mean by 'in them cases'? (A.) Cases where there is trouble in that shop. We have had that hall hired time and time again for meeting the shop's crew to go in the day time. They all met in the day time.

(Q.) You have stated cases where there was trouble in that shop; I want to have you tell me how you knew there was trouble in that shop? (A.) In what shop?

7517 (Q.) Mr. Loewe's. Before you came to Danbury on the 24th. (A.) Did I state there was trouble in that shop?

(Q.) You said you called meetings of this kind in cases where there was trouble in that shop. (A.) In the shop I said, I didn't specify, I didn't mean Mr. Loewe.

(Q.) Well, why did you call these men down at the beginning of the business day instead of in the evening when it would not interrupt their work and Mr. Loewe's work? (A.) I wanted to get them there in the morning so we could have a talk with them.

7518 (Q.) Why didn't you wait till evening instead of at the beginning of the business day? (A.) There wasn't any reason why we should wait until evening.

(Q.) You didn't see any reason why you shouldn't call the men at the beginning of the business day and interrupt the work of the factory? (A.) No, only we could call them out that night if we had time.

(Q.) Why should you wait until the evening of the following day; you had waited two years nearly? (A.) There wasn't any reason that I could see.

(Q.) And there was a reason why you should not, wasn't there? (A.) There wasn't any reason not that I

7519 could see.

(Q.) About what time did this meeting begin? (A.) I should judge between nine and ten o'clock in the morning.

(Q.) At the opening of the meeting what took place? (A.) At the opening of the meeting the men were all in the hall, and I got up and explained to them about the efforts to see if Mr. Loewe would open up a union factory. I went through that. I had a very clear recollection of it at that time; I am sorry I ain't got it now, but I explained it in detail.

(Q.) Did you read Mr. Loewe's letter to you why he refused? (A.) I think I explained it to them. I don't

7520 recollect reading it. There wasn't anything I felt I should hide from the men.

(Q.) And you talked to them freely concerning your organization and its affairs? (A.) Yes, sir.

(Q.) And I understand you referred to the unionizing of concerns by your organization? (A.) Yes, that is along the lines of the progress of the organization, yes.

(Q.) And named certain concerns? (A.) Yes, I told a number of factories that had went fair, a large number of them.

(Q.) You gave the names of a large number? (A.) No, I told them of a large number of them. 7521

(Q.) And you gave the names, you say, of Mr. Berg and Mr. Roelof? (A.) Yes, I mentioned their names.

(Q.) Any others? Refer to Mr. Knox? (A.) I think I referred to Mr. Knox; I don't remember.

(Q.) I will read your testimony to you as given to me by Mr. Kirby. 'I told them of the efforts of our organization in other factories. I told them of the strike in Berg's, of the strike in Roelof's, I told them that those shops went fair, I told them of the trouble in E. M. Knox & Co. that did not go fair, and mentioned most everything that I could in the line of progress of the association. I remember distinctly mentioned those shops.' Do you still stick by that? (A.) Well, in the Knox—I won't be positive about that; I will not be positive about that." 7522

Mr. Merritt:

I don't know as I need to read all that, in fact he says he did not refer to Knox, he just referred to Mr. Berg and Mr. Roelof.

Now I will read from page 2551.

"(Q.) I will ask you the question I asked Mr. Shalvoy, why you picked out Mr. Berg and Mr. Roelof from all that list of concerns that your organization had brought into the union? (A.) Well, I couldn't say unless it was to show that that was about the only successes we had, I don't know why I should say outside of that. 7523

(Q.) You said in effect, didn't you, that you thought you would be successful with Mr. Loewe, and that he would have to go union? (A.) I said I thought he would go union in a few days.

(Q.) And you pointed to Mr. Berg's case and Mr. Roelof's case as evidence to give confidence in your statements, didn't you? (A.) Yes, I did.

(Q.) And do you mean to say that in pointing to Mr. Berg's case and Mr. Roelof's case as evidence of your statement that you would be successful with Mr. Loewe, that you did not in any way call their attention to the methods you had employed, or had been employed to unionize those concerns? (A.) I don't know what you mean by those methods; what do you mean by that? 7524

(Q.) I am asking you a question, whether you didn't make any statement at that meeting as to the methods that had been employed to unionize Mr. Berg and Mr. Roelof's? (A.)

7525 If I made any statement to them it was in reference to the union label market. The manufacturers had told me there was two markets, a union label market, and a non-union market, and I told them that the union label market was growing up very rapidly. If I told them anything it would be in that line.

(Q.) That doesn't explain why you referred to Mr. Berg and Mr. Roelof, and not to the other concerns that had come to use your union label, and I am asking you if you didn't say anything to them concerning the methods that were particularly directed against Mr. Berg and Mr. Roelof?

7526 (A.) I don't know what the efforts were particularly; I don't know what you mean by that.

(Q.) I am asking you whether you said anything about the methods that were particularly directed against those concerns? (A.) No, I have no recollection of it.

(Q.) As a matter of fact, you knew there had been agents on the road directing attention to Mr. Berg's goods, didn't you? (A.) What those agents were doing on the road I don't know, unless it was the letters that they sent to the Journal of the Hatters.

(Q.) Well, that is sufficient. (A.) I had no method

7527 of knowing, no means of knowing.

(Q.) And it shows, doesn't it, that the agents were centering their attention upon Mr. Berg's goods? (A.) I don't know where they were centering it. It shows that they have done some boycotting, one or two of them, but my understanding is they centered their attention on advertising our union label."

Mr. Merritt:

I will skip that and go to page 2554.

"(Q.) Well, then you knew, Mr. Maher what were the methods employed by your organization against F. Berg

7528 & Co. and Henry H. Roelof & Co., didn't you? (A.) As far as I knew of it, I got a letter in the Journal, two or three letters.

(Q.) There were a good many more than two or three? (A.) I don't know just what the number is, I haven't went over it to verify anything." .....

"(Q.) You knew that $18,000 had been expended in connection with the Berg strike alone, didn't you? (A.) Yes.

(Q.) Now, I am asking you whether or not at that meeting you didn't state these facts to your union members or anything about them? (A.) I did not. 7529

(Q.) Made no mention of the methods that had been employed by your organization? (A.) No, sir.

(Q.) You picked out those two concerns in order to win confidence in your statement that you would win in Mr. Loewe's case, and you had employed those methods against those concerns, or your organization had? (A.) Decidedly no.

(Q.) You knew they had? (A.) What?

(Q.) You knew your organization had employed these methods which we would have set out here? (A.) It was my understanding when I read those letters that those agents had overstepped the mark. 7530

(Q.) Whether they had overstepped it or not, they had been overstepping it for years, hadn't they, without anyone discharging them? (A.) No, not for years, that I know of.

(Q.) Well, how long? (A.) I don't know just how long.

(Q.) Well, for several years? (A.) I don't know how long or how often other than the information I see in the Journal. 7531

(Q.) But I understand you pointed particularly to those concerns, to show your hearers why you expected to unionize Mr. Loewe in a few days, and we have called your attention here to the methods employed against those concerns, Berg and Roelofs? (A.) Yes.

(Q.) And you want to deny that you did not state to them that you had agents on the road to treat Mr. Loewe in the same way as those concerned you had mentioned? (A.) No, sir, I never made use of that; I don't believe in it."

Mr. Merritt:

I will now read from the bottom of page 2559, after referring to an article in the papers concerning the Loewe strike, etc. 7532

"(Q.) But what purpose had you in inducing the non union men to come out? (A.) Expecting Mr. Loewe would make the factory a union factory. (Q.) Then these methods were a continuation of the plans originally made to unionize Mr. Loewe's factory which were begun by the interviews with Mr. Loewe? (A.) They grew out of those interviews. (Q.) And they were efforts, I suppose, take by your organi-

7533 zation to accomplish what you desired and intended to accomplish a year and a half ago before that time? (A.) I don't know as the organization could be properly mentioned there. It was my effort. (Q.) Referring to your consecutive board— (A.) I, as an individual, was the only one responsible for the first interview with Mr. Loewe. (Q.) Well, referring to the later interviews, which you had reported back to the board, isn't that true? (A.) Well, that is one of the things following that, yes. (Q.) Now I will ask you how the coming out of the non union men would promote the unionizing of the Loewe factory? (A.) Would promote it?

7534 (Q.) Yes. (A.) Well, in my judgment, the men, if they were working there a good while, were proficient; I didn't expect he would get any union men from Danbury. (Q.) And thus calling out of the non-union men you thought that they were probably some of the induced to stay out by your remarks, how, in your judgment, does that tend to bring about the unionizing of Mr. Loewe's factory? (A.) Just as I told you.

(Q.) I didn't understand that you answered my question.

The Court:

7535 He told you they were proficient, and it was taking away from Mr. Loewe's factory men that were capable of fulfilling their duties.

(Q.) Is that the idea? (A.) Yes, that is it.

(Q.) The idea was to cripple the factory? (A.) I don't know as the idea was—yes, I can say that is the idea: the idea was not to promote the factory.

(Q.) So that he couldn't manufacture goods? (A.) That is the result, apt to be, of every strike.

(Q.) That was the idea of every strike, isn't it? (A.) Yes.

7536 (Q.) And then the idea of having these men come out was to prevent Mr. Loewe filling his orders? (A.) I don't know anything about his orders.

(Q.) Well, prevent his getting out goods, whether he had them on order or whether they were future orders?

The Court:

Make it difficult for him to fill his orders or get rid of his goods.

The Witness:

Prevent his getting out hats; yes.

(Q.) Now you testified that there was an understanding among the men that Mr. Loewe's factory was made a foul factory by this action. I want to get just what you did mean by that and that they shouldn't work there. (A.) Well, I would say this, that the action of all these men stopping at that time would possibly prevent a union man from going in there to work. 7537

(Q.) Well, you testified that you had to take some formal action of the local; had to take some formal action before a factory could be declared foul? (A.) Yes, local or national.

(Q.) The local or national? (A.) Yes. 7538

(Q.) Either one can do it? (A.) Yes.

(Q.) And that in this case no such action was taken either by the local or national? (A.) No, sir, not that I know of.

(Q.) And you did testify further along that that was an understanding among the men that it is a foul factory and that they shouldn't work there; isn't that true? (A.) Yes, that is true.

(Q.) So that as far as the effect upon the minds of the men it is the same situation as though your local had passed a formal resolution to that effect? (A.) Well, I don't think the effect would be as strong as if they passed a resolution or a motion to that effect. 7539

(Q.) Well, your meetings are not very largely attended, are they, by a large number of people? (A.) Oh, that doesn't make any difference; the men report back to work the next day and would mention the meeting.

(Q.) So everything that is done at a meeting is known among the rank and file? (A.) Generally there is one of them that will speak of something that went on.

(Q.) Generally the proceedings at these meetings become common knowledge among your membership? (A.) Well, I wouldn't say that. 7540

(Q.) Well, that is what I want to find out. (A.) I won't say that. There is months and months, possibly, a man might work there and not know what went on in the meeting. It doesn't naturally follow that they all know.

(Q.) Then the fact whether a factory was declared foul or not by a formal resolution wouldn't come to the attention of your members generally? (A.) Why, I think it would in that case.

7541 (Q.) You think it would; you think a matter of that kind would be reported and rumored around so that practically every man would know of it? (A.) If the factory was declared foul by the local association I suppose every unoin man would find it out.

The Court:

Well, I understood you to say, Mr. Maher, this situation here was about the same thing as if you had actually passed the vote? (A.) It had the same effect.

The Court:

It had the same effect upon the union men? (A.)

7542 Yes."

Mr. Merritt:

I will now read on page 2573.

"(Q.) When did you first form the intention of taking any active steps in this matter preceding that time?"

Mr. Merritt:

That is the time he promised Mr. Loewe on the 24th of July, 1902.

"(A.) Preceding that?

(Q.) Yes. (A.) I can't say just when, but I intended to carry it right down to a conclusion.

7543 (Q.) When did you intend to do so? (A.) When I started the first visit to him.

(Q.) In 1900? (A.) Yes.

(Q.) And in 1900, then, you intended to sooner or later come down to this conclusion? (A.) I intended to go as far as I could to get Mr. Loewe's factory a union factory.

(Q.) And when you say go as far as you could you mean do the things which you actually did? (A.) I believe so; one thing led to another.

(Q.) And you formed the intention in 1900? (A.) Well, I naturally used every effort I could and as one event

7544 followed another I went along.

(Q.) And then when you reported back to the Board in 1900 was that the Board's intention? (A.) I can't tell what the men were thinking of.

(Q.) Well, it was discussed in the Board; what was the Board's attitude toward what you were doing? (A.) I can't tell just what their attitude was; they were encouraging. They wanted to see the shop fair. It would be only assumption on my part as to what their attitude was.

(Q.) Didn't they say for you to go ahead? (A.) Yes, they encouraged going ahead. 7545

(Q.) Then after you reported back to the Board in 1900 of your plan of following this matter of your intention to carry this to a conclusion the Board of Directors authorized you to go ahead? (A.) They passed a vote on the question referring it to the national executive board.

(Q.) I am speaking now about the General Executive Board in 1900 when you reported back to them and you had an intention of thus carrying this thing out sooner or later. (A.) Yes, when I reported it to them they encouraged it to go ahead.

(Q.) You reported then that it was your idea sooner or later that you intended to carry the matter to a conclusion? (A.) I reported then that I was hopeful that the results would be favorable to us. 7546

(Q.) And didn't you report that the intention was in your mind of ultimately carrying the matter to a conclusion? (A.) Yes, I intended to waste and exhaust all means that I could.

(Q.) Did you report that to them? (A.) I guess I did.

(Q.) Then as a matter of fact you needed no further conference with your General Executive Board as to any steps you took from and after the year 1900? (A.) Why, I consulted with them. I would bring up any matter; I never felt that I would take any responsibility on myself. 7547

(Q.) Well, you didn't consult with them in regard to this at all, did you? (A.) I can't tell whether I did or not. I can't recollect.

(Q.) But you think it is likely that you didn't consult with them? (A.) It is likely I would consult with them in any important matter that was going on in my shop.

(Q.) You testified a few minutes ago that you didn't think it was at all unlikely that you came up there to Danbury on your own responsibility without consulting with them? (A.) I couldn't say whether I came to Danbury or was in Danbury. I lived in Danbury. 7548

(Q.) You are not directing your attention to my question. You testified, didn't you, that it was not at all unlikely in your mind that you came up there on your own responsibility without consultation with your association to carry out this work? (A.) Yes, it is not unlikely.

7549 (Q.) Yes; then you don't think it is unlikely that you didn't consult with your association in regard to all important matters? (A.) Well, it might be that I didn't; it might be that I did; but as a rule I did.

(Q.) Oh, you think this may have been an exception to the rule? (A.) It may have been.

The Court:

Can't you shorten it, Mr. Merritt, if you ask him the plain, simple question whether at the time he telephoned Mr. Loewe he didn't feel that he was acting with the approbation of the other members of the Executive Board?

7550 Witness:

That means with the approval, I believe.

The Court:

Yes.

Witness:

Yes."

Mr. Merritt:

I want to read here from the re-direct certain items of expenses which appear in Mr. Maher's testimony, who was treasurer at the time of the strike, on page 2528.

"M. Wren and Wm. Brady, D. E. Loewe shop wages due

7551 from H. C. Shalvoy, $150; that is Michael Wren, isn't it? (A.) I don't know what his first name is; it is Wren.

(Q.) Is that the Mr. Wren that was employed to furnish information concerning Mr. Loewe's shipments? (A.) Well, I tell you, I don't know who Mr. Moffitt employed; I didn't employ him." . . . . .

"(Q.) Can you explain this statement, Michael Wren and Wm. Brady, D. E. Loewe's shop, wages due from H. C. Shalvoy? (A.) Do you want me to explain my knowledge.

(Q.) Yes. (A.) My knowledge is somebody paid it. I think Mr. Shalvoy paid it, and I sent him a check for it,

7552 if I have got him charged with it. That is the way I have got that item."

Mr. Merritt:

Now I will read on page 2638, after the talk about advertising.

"(Q.) Advertising matter comes under your funds called national; that is proper? (A.) Yes. It is safe to say that all of that comes out; it is a very small item.

(Q.) And the expense of the agent comes under your defense fund? (A.) Yes

(Q.) And the charges in the Roelof matter which appear in that book, the defense fund covers all the charges in connection with the Roelof matter? (A.) I think it does; I wouldn't be sure; there might be some in the other account." 7553

"(Q.) The Journals contain expense accounts of the expenditures; do they cover disbursements from the defense fund? (A.) No. That is the Hatters' Journal.

(Q.) Yes. (A.) No, they won't.

(Q.) Then there is no published account concerning the defense fund? (A.) No."

Mr. Merritt:

Referring to the first meeting at White Street when the union men only were present, he says on page 2504: 7554

"(A.) I told them of the efforts of our organization in other directions. Told them of the strike in Berg's, the strike in Roelof's; told them that these shops went fair. Told them of the trouble in E. M. Knox & Co. that didn't go fair. I mentioned most everything that I could in the line of progress of the association, but I remember distinctly mentioned those shops.

(Q.) That was the first meeting? (A.) That was at the first meeting where the union men was." 7555

Mr. Merritt:

Then later he corrected himself that he did not mention the name of Knox.

Mr. Beach:

There is this one thing I want to call the jurors attention to in Mr. Maher's testimony. I don't want to read the whole thing to the jury, but I want it in evidence so I can refer to it. It is "The Hatters Constitution, Rules and Regulations adopted by the United and True Assistant Society of Hatters in Danbury, County of Fairfield, State of Connecticut, on Friday the 21st of November, 1800. Reprinted at Danbury, January, 1910." 7556

Mr. Davenport:

There were certain matters I reserved the privilege of introducing to the jury, and one was that statement that I had extracted from the financial report of Mr. Morrison, showing that the monthly taxes from the United Hatters to the American Federation of Labor had been paid, the amount that under the constitution to the American Federation of Labor—

Mr. Mulholland:

You mean the per capita tax?

7557 Mr. Davenport:

Yes, had been paid down to the commencement of the suit, and I suppose there is no dispute about that.

Mr. Beach:

That is admitted.

Mr. Davenport:

I think that is all there is.

The Court:

Do both sides rest?

Mr. Davenport:

7558 With the exception of this little matter of some kind of stipulation or agreement about these unfair lists.

(End of evidence in the case.)

The foregoing constitutes all the testimony and a statement of all the evidence introduced and offered upon the trial of this cause. Both parties have rested, the case was argued to the jury by counsel for the respective parties.

Prior to the charge of the court to the jury and to the arguments of counsel, the counsel for the defendants submitted to the court and requested the court to give to the jury the following instructions, towit:

7559

DEFENDANTS' REQUESTS TO CHARGE.

1. The combination charged in the complaint falls within the class of restraints of trade aimed at compelling third parties and strangers involuntarily not to engage in the course of trade, except on conditions that the combination imposes.

2. The combination charged in the complaint is a combination directly for the purpose of preventing the plaintiffs and their customers, in other states, against their will, from continuing to carry on an existing trade and commerce among the several states, and in preventing them from engaging in 7560 and carrying on said trade and commerce between them.

3. To be entitled to any recovery in this action, the plaintiffs must show that a combination or conspiracy was formed for the direct purpose of compelling the plaintiffs and others involuntarily not to deal together in the course of interstate trade, and must also show that they were injured in their property or business by reason of such involuntary compulsion, or by reason of some act done for the purpose of compelling the plaintiffs and others, involuntarily, not to deal together in the course of interstate trade.

4. In determining whether there was or was not such a combination or conspiracy for the direct purpose of compelling the plaintiffs and others, involuntarily, not to deal together in the ordinary course of interstate trade, you should take into consideration all the evidence as to the professed intent of those persons who took an active part in the transaction, and you should also take into consideration all their acts, and omissions to act, in using, or not using the machinery which they had at hand, for the purpose of preventing the plaintiffs, and their customers, from engaging in, and carrying on, trade between them. 7561

5. If you find that the strike at the plaintiffs' factory was for the immediate purpose and object of compelling the plaintiffs to unionize their factory, and that the persons who took part in it did not then have any intention of preventing the plaintiffs and their customers from dealing together, except as the strike itself might temporarily interfere with the plaintiffs' production of hats; and if you find that no steps were thereafter taken to prevent the plaintiffs from employing other workmen, or from manufacturing and shipping hats; then the plaintiffs will not in this action be entitled to recover damages resulting from the strike, and from the plaintiffs' subsequent inability due to the comparative inefficiency of their new workmen to manufacture hats as good or as cheaply as before. 7562 7563

6. For the purpose of this case, workmen have the right to organize into or join a labor union, which should take joint action as to their terms of employment. It is of benefit to them and to the public that laborers should unite in their common interest and for lawful purposes. They have labor to sell. If they stand together they are often able, all of them, to command better prices for their labor than dealing singly with rich employers, because the necessity of the single employe may compel him to accept any terms offered to him. The accumulation of a fund for the support of those who feel that the wages offered are below the market prices is one of the legitimate objects of such an organization. They have the right to appoint officers, who shall advise them as to the course taken by them in their relations with their employer. They might unite with other unions. The officers they appoint or any other person to whom they choose to listen may advise them as to the proper course to be taken by them in regard to their employment, or if they choose to repose such authority in any one, may order them on pain of expulsion from their union peaceably to leave the employ of 7564

7565 their employer because any of the terms of their employment are unsatisfactory.

Judge Taft in Thomas vs. Cinn., etc., R. R., 62 F. R., p. 817.

7. Some degree of compulsion or intimidation brought to bear upon the plaintiffs' customers, or against persons handling the plaintiffs' hats, in order to compel them involuntarily to cease or limit their dealings with the plaintiffs, or in the plaintiffs' hats, must be shown before the plaintiffs can recover damages for the loss or diminution of business with such customers or retailers.

7566 8. In so far as any of the plaintiffs' customers, or any retail dealers handling the plaintiffs' hats, were not influenced to cease dealing with the plaintiffs, or handling the plaintiffs' hats, except because of the fear of losing the patronage of organized labor, or the hope of keeping, or gaining, the patronage of organized labor; their trade with the plaintiffs, or in the plaintiffs' hats, was not restrained for the purposes of this case, and the plaintiffs cannot recover in this action for damages resulting from loss or diminution of the trade of such customers.

9. The union label of the United Hatters is, in the states
7567 where it is registered according to law, a statutory trademark, and the officers and agents of the United Hatters have the same right to solicit trade for hats bearing their label as any merchant has to solicit trade for goods bearing his trademark.

10. In so far as any of the plaintiffs' customers, or any retail dealers handling the plaintiffs' hats, were not influenced to cease dealing with the plaintiffs, or handling the plaintiffs' hats, except because of an increased demand for hats bearing the union label of the United Hatters; their trade with the plaintiffs, or in the plaintiffs' hats, was not restrained, for
7568 the purposes of this case, and the plaintiffs cannot recover in this action for damages resulting from the loss or diminution of business solely due to an increased demand for union label hats.

11. This action is not broadly for interference with the good-will of the plaintiffs' business, but for involuntarily preventing the plaintiffs and their customers in other states from dealing together in the ordinary course of interstate trade, in pursuance of a combination or conspiracy directly to prevent them from so trading together, and the plaintiffs are not entitled to recover in this action in damages for loss of trade

with customers in other states, except in so far as the plaintiffs may show that their customers were compelled involuntarily to cease or limit their dealings with the plaintiffs, or in the plaintiffs' hats. 7569

12. The plaintiffs are not entitled in this action to recover in damages suffered after the commencement of this action, towit, September 23rd, 1903.

13. The plaintiffs are not entitled to recover in this action in damages in consequence of the comparative inefficiency of their factory organization after the strike, except such as accrued prior to the latter part of October, 1902.

14. The plaintiffs are not entitled to recover in this action in damages for loss of trade with any given customer, unless they can show by a fair preponderance of evidence that the loss of trade with such customer was caused by the acts of some of the defendants, or their authorized agents, done in pursuance of a combination or conspiracy to compel such customers involuntarily not to deal with them in the ordinary course of interstate commerce. 7570

15. If you find that the direct and immediate intent of the officers and agents of the United Hatters of North America was to unionize the plaintiffs' factory, and that they did not otherwise prevent, or intend to prevent, the plaintiffs and their customers in other states, from dealing together, than by a strike for the purpose of compelling the plaintiffs to unionize their factory, and by influencing the plaintiffs' customers in other states voluntarily to divert their trade to other manufacturers until such time as the plaintiffs should unionize their factory, then your verdict should be for the defendants. 7571

16. If you find that there was such a combination or conspiracy as the court may charge you is a sufficient basis for this action, then the question of the personal responsibility in damages of any defendant in this action will depend upon whether he consciously and intentionally participated in, or authorized such combination. 7572

17. Proof of mere suspicion or bare knowledge that the officers and agents of the United Hatters had, in times past, followed the customers and goods of other manufacturers into other states for the purpose of preventing their sale, is not of itself sufficient to charge any defendant with having authorized the officers and agents of the United Hatters to repeat such conduct, as against these plaintiffs. It must be shown either that he approved of such conduct, or that he intended it

7573 to be continued. The acceptance of office in the union, with knowledge of such conduct, tends to show, such approval, but the mere retention of membership in the union, with such knowledge, and the continued payment of dues, without any other evidence, does not.

18. If you find as to any defendant or defendants that they had never held office in any local or national union and were never delegates to any convention; that they had no information of any trouble in the Loewe factory until after the men were out; that they were not regular readers of the Journal of the United Hatters and do not remember reading 7574 the printed reports of the conventions of the United Hatters, according to their best recollection; that they did not know prior to the commencement of this action that the officers or agents of the United Hatters had followed, or were charged with following the customers or goods of any hat manufacturer in other states for the purpose of restricting or preventing the sale of such manufacturers' hats; that to the best of their recollection they never read in the Hatters' Journal or elsewhere any statements to that effect; that they were not regular attendants at the meetings of their respective local 7575 unions, and to the best of their recollection, were not present at any meeting where the proceedings of conventions were reported on, or the Berg or Roeloff troubles reported on or discussed; that to the best of their recollection they never heard of the suit brought by Roeloff against the United Hatters; that they knew there were agents of the United Hatters on the road, but supposed that they were employed to advertise the Union Label and promote the sale of union-made hats; that those of them who lived in Danbury received the notice, Exhibit 86; that after this suit was brought the received the letter from Mr. Connolly relative to employment of counsel and signed and returned the form annexed thereto (said let- 7576 ter and form being the same as has been read in testimony from Danbury News of September 14th, 1903; that from 1900 to 1903 they read with more or less regularity some local newspaper in their respective towns, but not completely or invariably, and to the best of their recollection, they do not remember reading anything therein or elsewhere about the methods employed to constrain manufacturers to unionize their shops; that those of them who testified at the former trial were paid by the United Hatters for their time and expense in attending as witnesses; and that after this suit was brought

they continued to pay dues and made no protest, and did nothing to prevent the re-election of the same officers as before, then your verdict should be in favor of such defendant or defendants. 7577

The court charged the jury, and in the course of the charge to the jury instructed the jury in part as follows:

"Now if this evidence falls short of satisfying you that certain of these defendants did know of this unlawful conspiracy, or were in duty bound to know of it, or did tacitly approve of it, then such defendants should be acquitted, if any there may be; or, in other words, assuming that there was a conspiracy to violate the Federal Statute, as I have explained to you, and that the statute was, in fact, violated to the damage of the plaintiffs, then every person who had a part in planning or a hand in executing, or aided or abetted therein, is jointly liable. Membership in a labor union and the payment of dues, are not acts of themselves that necessarily constitute counseling, advising, aiding or abetting. Membership and payment of dues are the life of the voluntary association, and are the foundation of all its authority and the source of financial assistance in executing that authority. 7578

If these members paid their dues and continued to delegate authority to their officers and agents to commit unlawful deeds which in this case is the interference with the plaintiffs' interstate trade and commerce, under such circumstances as lead you to believe that they knew or ought to have known, and that such officers and agents were in that matter warranted in the belief that they were acting within their delegated authority, then such members are jointly liable, and no others." 7579

To which portion of said charge the defendants then and there duly excepted.

And in the course of the charge to the jury the court further instructed the jury in part as follows:

"If it was a part of the original scheme to unlawfully interfere with the plaintiffs' interstate commerce and trade as I have described, then the plaintiffs are entitled to recover all such damage as they suffered in the different steps taken leading up to and effecting that object, excluding, however, the steps taken in the State of Connecticut relative to the work here, except so far as that interfered with interstate commerce and trade in the carrying out of the original plan and scheme to force the plaintiffs' factory to become unionized by abridging and destroying his interstate commerce, or, in other words, 7580

7581 if you find the plot was to boycott the plaintiffs' trade with parties in sister states, if necessary to unionize their factory, and such boycotting was in fact resorted to, then the plaintiff is entitled to recover all such damages as were suffered in the execution of that plan to interfere with and destroy his interstate commerce and trade. As it had in it an unlawful design that was carried into effect, he is entitled to recover such damages as directly and proximately flow from the acts committed prior to the beginning of the suit."

To which portion of said charge the defendants then and there duly excepted.

7582 And in the course of the charge to the jury the court further instructed the jury in part as follows:

"The only acts of the defendants for which the plaintiffs can recover damages in this case are such acts set forth in the complaint as were done by the defendants or their agents before the suit was commenced; and the plaintiffs are entitled to recover all damages which are the proximate and natural result of such acts, including such damage as may have continued or resulted therefrom after the suit was commenced, but the plaintiffs cannot recover in this suit for any damages which are the result of the continuation of the alleged conspir-
7583 acy after the suit was commenced, or which are the result of the performance of any acts in furtherance of said conspiracy after the suit was commenced; and it is for you to determine from all the evidence in the case what part, if any, of the plaintiffs' damage which resulted after the suit was started, was the direct and proximate result of the alleged wrongful acts of the defendants before the commencement of the suit, and allow therefor."

To which portion of said charge the defendants then and there duly excepted.

7584 The Court refused to give to the jury each and every one of the defendants' requests to charge except that the Court charged the jury as appears from the charge on file, printed in Volume 1 of this record, and to each and every one of said refusals the defendants then and there duly excepted.

The jury then retired and after a short absence returned into the court with a verdict in favor of the plaintiffs for damages in the sum of Eighty Thousand ($80,000) Dollars, on the 11th day of October, 1912.

And thereupon the defendants moved the court to set aside said verdict as excessive and against the evidence, and

the court denied said motions and refused to set aside said ver- 7585
dict, to which rulings of the court the defendants, and each of them separately, duly excepted.

And, now, in furtherance of justice and that right may be done, the defendants present the foregoing as their bill of exceptions in this cause and pray that the same may be settled and allowed and signed, sealed and certified by the judge, as provided by law, and the court does hereby sign and seal the same.

James L. Martin, Judge.

THE DISTRICT COURT OF THE UNITED STATES FOR THE DIS- 7586
TRICT OF CONNECTICUT.

No. 538. AT LAW.

D. E. Loewe and Martin Fuchs,

vs.

Martin Lawlor et al.

PETITION FOR WRIT OF ERROR AND ORDER ALLOWING SAME.

7587

Now come the defendants in the above entitled cause, William P. Bailey, Charles Bailey, Frederick Benedict, John Cords, Virgil Dibble, T. Archibald Evans, Charles Frost, Howard S. Gilbert, George H. Gilbert, Charles Green, John Halpin, Reuben Johnson, Henry C. Judd, John L. Kane, Martin Lawlor, Charles Lathrop, George W. Morehouse, Byron Morgan, Barney Murphy, Owen Murray, William Ochs, William Ohler, Levi Short, Orrin Smith, William Stone, Myron Trowbridge, Patrick Troy, of Bethel, Connecticut; Theophilus Abieniste, Andrew Aitken, Nicholas W. Allen, 7588
Thomas H. Allen, Daniel H. Barnes, Nicholas W. Barzin, Clemens Beschele, Frederick S. Blackburn, John Blake, Simon Blake, Herman H. Bohman, Nelson H. Booth, James N. Boughey, Thomas Boyd, Thomas Boyd, John Bradshaw, Peter J. Brennan, Alphonse Bresson, Theodore Bright, Byron S. Brooks, Andrew G. Brown, Chauncey H. Butler, James P. Callahan, John J. Callahan, Achille Canale, Thomas J. Cassidy, William Clancy, Elmer R. Clark, John H. Collins, Lewy W. Comes, Patrick Connolly, Michael Corbett, James D. Costello,

7589 John H. Craft, Byron W. Crane, James Crotty, John Crotty, Peter T. Currie, William Deakin, George F. Denton, James Dillon, William S. Dutcher, John Dyer, John Ellegett, Patrick Ellegett, Carl Erdman, Timothy H. Farrell, Patrick J. Feeley, Patrick J. Fisher, Emil Floyske, Thomas Foley, Peter Gallagher, Christian Gottlieb Garni, William E. Gartner, Martin Gorman, Michael C. Griffin, Wright Hampson, David J. Hardy, Alexander Harkness, John Harkness, Patrick Hart, John Hassett, Stephen Havren, Michael Hennessy, George M. Herrick, Charles A. Hodge, Adolph Holdeichel, Nathan C. Hoy, William Humphries, Patrick F. Hunt, Charles W. Hurd,
7590 Michael Hurd, Patrick E. Jeffrey, Daniel Kearns, Martin Keating, Thomas Keenan, Daniel P. Kelley, Michael F. Kenney, John Keogh, Charles J. King, Frank Kornhass, Frank E. Krebs, Martin Lauf, Edward D. Lees, John Leonard, Thomas Leonard, Michael F. Lynch, John Morris, Jeremiah McCarthy, Patrick J. McCarthy, Patrick T. McCarthy, Martin McCue, Thomas E. McCauley, Martin McGettrick, James F. McGlone, John McGlone, Peter McGlone, Patrick McGrath, Charles F. McHan, Thomas McHugh, Daniel McInerey, Frank Meath, Henry Messer, Henry C. Michael, George J.
7591 Miller, Gustave Mougin, Eugene L. Mulkin, Daniel Murphy, Timothy Murray, John B. Nowlan, William V. Nowlan, George T. Oakley, Peter O'Boy, Louis E. Orton, Daniel J. Osborne, Alvah S. Pearse, George H. Phillips, Peter Picken, Arthur I. Pickett, John Pribula, Jacob Prinz, Christian Rheinhold, Frank Rhode, Frank E. Seaman, Hugh C. Shalvoy, Charles Shaffer, Frederick L. Stahl, George Stuckey, Michael H. Sullivan, William S. Sullivan, Joseph Tosi, Thomas E. Waters, Samuel S. Wilson, Frank K. Wildman, all of Danbury, Connecticut; Fanton W. Beers, Albert Berg, William A. Brennan, Stephen Carlin, Edward Cunningham, George A.
7592 Davis, Charles Flynn, Addison Hathaway, Peter F. Kearney, Patrick Keating, James Kinnane, Thomas Layhe, Charles Moore, S. Wallace Osborn, John E. Paul, Robert Pearson, John Redway, Owen Reilley, Daniel Riodan, John E. Rooney, Thomas F. Saunders, John W. Sculley, Max Singerwald, Charles Smith, Frederick Taylor, Peter Ward, William J. Weisheit, James Whitney, all of Norwalk, Connecticut; by their attorneys herein, John K. Beach, Esq., and Frank L. Mulholland, Esq., and say that on or about the 1 day of October, 1912, final judgment was rendered against them and in favor of the plaintiffs herein to recover of the said de-

fendants the sum of Two Hundred Twenty-four Thousand ($224,000.) Dollars, and a reasonable attorney fee of Five Thousand ($5,000.) Dollars and their costs and disbursements taxed and allowed at the further sum of $5240.12 (Int. and of costs taxed.) 7593

That in said judgment and the proceedings herein had prior thereto, in this cause, certain errors were committed to the prejudice of these defendants, all of which will more in detail appear from the assignment of errors, which are on file with this petition.

Therefore the defendants pray an order of this court, allowing said defendants to prosecute a writ of error to the Honorable United States Court of Appeals, for the Second Circuit, and that a writ of error may issue in this behalf out of the United States Circuit Court of Appeals for the Second Circuit for the correction of the errors so complained of and in accordance with the laws of the United States in that behalf made and provided, and that a transcript of the record, proceedings and papers in this case, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Second Circuit, and that an order be made herein fixing the amount of security which the defendants shall give and furnish upon said writ of error, and upon the giving of such security all further proceedings in this court be suspended and stayed, until the determination of said writ of error in the said United States Court of Appeals for the Second Circuit, and your petitioners will ever pray. 7594 7595

John K. Beach,
Frank L. Mulholland.
Attorneys for Defendants.

It is ordered that the writ of error above prayed for be allowed this 18.. day of January, 1913.

..... James L. Martin .....
United States Judge. 7596

7597 IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF CONNECTICUT.

AT LAW. No. 538.

D. E. Loewe et al.

vs.

Martin Lawlor et al.

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL.

7598 Come now the defendants in the above entitled cause, by John K. Beach and Frank L. Mulholland, their attorneys, and pray for a reversal of the judgment entered in the above entitled cause in favor of the plaintiffs and against the defendants, on or about the 15th day of November, 1912, and as ground for reversal set forth and file the following assignments of errors upon which they and each of them rely, upon their and his prosecution of the writ of error in the above entitled cause:

7599 1. That the court erred in refusing to charge the jury as requested in the first pargraph of the defendants' requests to charge, as follows:

"1. The combination charged in the complaint falls within the class of restraints of trade aimed at compelling third parties and strangers involuntarily not to engage in the course of trade, except on conditions that the combination imposes."

2. That the court erred in refusing to charge the jury as requested in the second paragraph of the defendants' request to charge, as follows:

7600 "2. The combination charged in the complaint is a combination directly for the purpose of preventing the plaintiffs and their customers, in other states, against their will, from continuing to carry on an existing trade and commerce among the several states, and in preventing them from engaging in and carrying on said trade and commerce between them."

3. That the court erred in refusing to charge the jury as requested in the third pargraph of the defendants' requests to charge, as follows:

"3. To be entitled to any recovery in this action, the plaintiffs must show that a combination or conspiracy was

formed for the direct purpose of compelling the plaintiffs and others involuntarily not to deal together, in the course of interstate trade, and must also show that they were injured in their property or business by reason of such involuntary compulsion, or by reason of some act done for the purpose of compelling the plaintiffs and others involuntarily not to deal together in the course of interstate trade." 7601)

4. That the court erred in refusing to charge the jury as requested in the fourth paragraph of the defendants' requests to charge, as follows:

"4. In determining whether there was or was not such a combination or conspiracy for the direct purpose of compelling the plaintiffs and others involuntarily not to deal together in the ordinary course of interstate trade, you should take into consideration all the evidence as to the professed intent of those persons who took an active part in the transaction, and you should also take into consideration all their acts, and omissions to act, in using, or not using the machinery which they had at hand, for the purpose of preventing the plaintiffs, and their customers, from engaging in, and carrying on, trade between them." 7602)

7603)

5. That the court erred in refusing to charge the jury as requested in the fifth paragraph of the defendants' requests to charge, as follows:

"5. If you find that the strike at the plaintiffs' factory was for the immediate purpose and object of compelling the plaintiffs to unionize their factory, and that the persons who took part in it did not then have any intention of preventing the plaintiffs and their customers from dealing together, except as the strike itself might temporarily interfere with the plaintiffs' production of hats; and if you find that no steps were thereafter taken to prevent the plaintiffs from employing other workmen, or from manufacturing and shipping hats; then the plaintiffs will not in this action be entitled to recover damages resulting from the strike, and from the plaintiffs' subsequent inability due to the comparative inefficiency of their new workmen to manufacture hats as good or as cheaply as before." 7604)

7605 7. That the court erred in refusing to charge the jury as requested in the seventh pargraph of the defendants' requests to charge, as follows:

"7. Some degree of compulsion or intimidation brought to bear upon the plaintiffs' customers or against persons handling the plaintiffs' hats, in order to compel them involuntarily to cease or limit their dealings with the plaintiffs, or in the plaintiffs' hats, must be shown before the plaintiffs can recover damages for the loss or diminution of business with such customers or retailers."

7606 8. That the court erred in refusing to charge the jury as requested in the eighth paragraph of the defendants' requests to charge, as follows:

"8. In so far as any of the plaintiffs' customers, or any retail dealers handling the plaintiffs' hats, were not influenced to cease dealing with the plaintiffs, or handling the plaintiffs' hats, except because of the fear of losing the patronage of organized labor, or the hope of keeping or gaining, the patronage of organized labor; their trade with the plaintiffs, or in the plaintiffs' hats, was not restrained for the purposes of this case, and the plaintiffs cannot recover in this action for damages resulting from loss or diminution of the trade of such customers."

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7608

9. That the court erred in refusing to charge the jury as requested in the ninth paragraph of the defendants' requests to charge, as follows: 7609

"9. The union label of the United Hatters is, in the states where it is registered according to law, a statutory trademark, and the officers and agents of the United Hatters have the same right to solicit trade for hats bearing their label as any merchant has to solicit trade for goods bearing his trademark."

10. That the court erred in refusing to charge the jury as requested in the tenth paragraph of the defendants' requests to charge, as follows: 7610

"10. In so far as any of the plaintiffs' customers, or any retail dealers handling the plaintiffs' hats, were not influenced to cease dealing with the plaintiffs, or handling the plaintiffs hats, except because of an increased demand for hats bearing the union label of the United Hatters; their trade with the plaintiffs, or in the plaintiffs' hats, was not restrained, for the purposes of this case, and the plaintiffs cannot recover in this action for damages resulting from the loss or diminution of business solely due to an increased demand for union label hats." 7611

11. That the court erred in refusing to charge the jury as requested in the eleventh paragraph of the defendants' requests to charge, as follows:

"11. This action is not broadly for interference with the good-will of the plaintiffs' business, but for involuntarily preventing the plaintiffs and their customers in other states from dealing together in the ordinary course of interstate trade, in pursuance of a combination or conspiracy directly to prevent them from so trading together, and the plaintiffs are not entitled to recover in this action in damages for loss of trade with customers in other states, except in so far as the plaintiffs may show that their customers were compelled involunarily to cease or limit their dealings with the plaintiffs, or in the plaintiffs' hats." 7612

12. That the court erred in refusing to charge the jury as requetsed in the fifteenth paragraph of the defendants' requests to charge, as follows:

7613 "12. The plaintiffs are not entitled in this action to recover in damages suffered after the commencement of this action, to-wit: September 23rd, 1903."

14. That the court erred in refusing to charge the jury as requested in the fourteenth paragraph of the defendants' requests to charge, as follows:

"14. The plaintiffs are not entitled to recover in this action in damages for loss of trade with any given customer, unless they can show by a fair preponderance of evidence
7614 that the loss of trade with such customer was caused by the acts of some of the defendants, or their authorized agents, done in pursuance of a combination or conspiracy to compel such customers involuntarily not to deal with them in the ordinary course of interstate commerce."

15. That the court erred in refusing to charge the jury as requested in the fiftenth paragraph of the defendants' requests to charge, as follows:

7615 "15. If you find that the direct and immediate intent of the officers and agents of the United Hatters of North America was to unionize the plaintiffs' factory, and that they did not otherwise prevent, or intend to prevent, the plaintiffs and their customers in other states, from dealing together, than by a strike for the purpose of compelling the plaintiffs to unionize their factory, and by influencing the plaintiffs' customers in other states voluntarily to divert their trade to other manufacturers until such time as the plaintiffs should unionize their factory, then your verdict should be for the defendants."

7616 16. That the court erred in refusing to charge the jury as requetsed in the sixteenth paragraph of the defendants' requests to charge, as follows:

"16. If you find that there was such a combination or conspiracy as the court may charge you is sufficient basis for this action, then the question of the personal responsibility in damages of any defendant in this action will depend upon whether he consciously and intentionally participated in, or authorized such combination."

17. That the court erred in refusing to charge the jury as requested in the seventeenth paragraph of the defendant's requests to charge, as follows: 7617

"17. Proof of mere suspicion or bare knowledge that the officers and agents of the United Hatters had, in times past, followed the customers and goods of other manufacturers into other states for the purpose of preventing their sale, is not of itself sufficient to charge any defendant with having authorized the officers and agents of the United Hatters to repeat such conduct, as against these plaintiffs? It must be shown either that he approved of such conduct, or that he intended it to be continued. 7618 The acceptance of office in the union, with knowledge of such conduct, tends to show such approval; but the mere retention of membership in the union, with such knowledge, and the continued payment of dues, without any other evidence, does not."

18. That the court erred in refusing to charge the jury as requested in the eighteenth paragraph of the defendants' requests to charge, as follows:

"18. If you find as to any defendant or defendants that they had never held office in any local or national union and were never delegates to any convention; that 7619 they had no information of any trouble in the Loewe factory until after the men were out; that they were not regular readers of the Journal of the United Hatters and do not remember reading the printed reports of the conventions of the United Hatters; that according to their best recollection they did not know prior to the commencement of this action that the officers or agents of the United Hatters had followed, or were charged with following, the customers or goods of any hat manufacturer in other states for the purpose of restricting or preventing the sale of such manufacturers' hats; that to the 7620 best of their recollection they never read in the Hatters' Journal or elsewhere any statements to that effect; that they were not regular attendants at the meetings of their respective local unions, and to the best of their recollection, were not present at any meeting where the proceedings of conventions were reported on, or the Berg or Roeloff troubles reported on or discussed; that to the best of their recollection they never heard of the suit brought by Roeloff against the United Hatters; that they knew there

7621 were agents of the United Hatters on the road, but supposed that they were employed to advertise the union label and promote the sale of union-made hats; that those of them who lived in Danbury received the notice, Exhibit 86; that after this suit was brought they received the letter from Mr. Connolly relative to employment of counsel and signed and returned the form annexed thereto (said letter and form being the same as has been read in testimony from Danbury News of September 14th, 1903), that from 1900 to 1903 they read with more or less regularity some local newspaper in their respective towns,
7622 but not completely or invariably, and to the best of their recollection, they do not remember reading anything therein or elsewhere about the methods employed to constrain manufacturers to unionize their shops; that those of them who testified at the former trial were paid by the United Hatters for their time and expense in attending as witnesses; and that after this suit was brought they continued to pay dues and made no protest, and did nothing to prevent, the re-election of the same officers as before, then your verdict should be in favor of such defendant or defendants."

7623 19. That the court erred in charging the jury as follows, to-wit:

"Now if this evidence falls short of satisfying you that certain of these defendants did know of this unlawful conspiracy, or were in duty bound to know of it, or did tacitly approve of it, then such defendant should be acquitted, if any there be; or, in other words; assuming that there was a conspiarcy to violate the Federal statute, as I have explained to you, and that the statute was, in fact, violated to the damage of the plaintiffs, then every person who had a part in planning or a hand in executing, or aided, or
7624 abetted therein, is jointly liable. Membership in a labor union and the payment of dues, are not acts of themselves that necessarily constitute counselling, advising, aiding or abetting. Membership and payment of dues are the life of the voluntary association, and are the foundation of all its authority and the course of financial assistance in executing that authority.

If these members paid their dues and continued to delegate authority to their officers and agents to commit unlawful deeds, which, in this case is the interference

with the plaintiffs' interstate trade and commerce, under such circumstances as lead you to believe that they knew, or ought to have known, and that such officers and agents were in that matter warranted in the belief that they were acting within their delegated authority, then such members are jointly liable, and no others." 76253

20. That the court erred in charging the jury as follows, to-wit:

"If it was a part of the original scheme to unlawfully interfere with the plaintiffs' interstate commerce and trade as I have described, then the plaintiffs are entitled to recover all such damage as they suffered in the different steps taken leading up to the effecting of that object, excluding, however, the steps taken in the State of Connecticut relative to the work here, (except so far as that interfered with interstate commerce and trade) in the carrying out of the original plan and scheme to force the plaintiffs' factory to become unionized by abridging and destroying his interstate commerce, or, in other words, if you find the plot was to boycott the plaintiffs' trade with parties in sister states, if necessary to unionize their factory, and such boycotting was in fact resorted to, then the plaintiff is entitled to recover all such damages as were suffered in the execution of that plan to interfere with and destroy his interstate commerce and trade. As it had in it an unlawful design that was carried into effect, he is entitled to recover such damages as directly and proximately flow from the acts committed prior to the bringing of the suit." 76264 76275

21. That the court erred in charging the jury as follows, to-wit:

"The only acts of the defendants for which the plaintiffs can recover damages in this case are such acts as are set forth in the complaint and as were done by the defendants or their agents before the suit was commenced; and the plaintiffs are entitled to recover all damages which are the proximate and natural result of such acts, including such damage as may have continued or resulted therefrom after the suit was commenced by the plaintiffs, but cannot recover in this suit for any damages which are the result of the continuation of the alleged conspiracy after the suit was commenced, or which are the result of the performance of any acts in furtherance of 76281

7629 said conspiracy after the suit was commenced; and it is for you to determine from all the evidence in the case what part, if any, of the plaintiffs' damage which resulted after the suit was started was the direct and proximate result of the alleged wrongful acts of the defendants before the commencement of the suit, and allow therefor."

22. That the court erred in refusing to set aside the verdict as against the evidence and in overruling the defendants' motion to set aside such verdict as against the evidence.

7630 23. That the court erred in overruling the defendants' motion to set aside the verdict as excessive.

24. That the court erred in admitting to be read, against the objection and exception of the defendants, an extract from the Danbury Evening News for the 18th day of May 1903, entitled "Annual Address of President Moffitt." "The Head of the United Hatters Reviews his Work and Makes Recommendations," as appears on page 1105 and elsewhere of the printed record.

25. That the court erred in admitting to be read in evidence against the objection and exception of the defendants, 7631 an extract from the Danbury Evening News of June 18th, 1900, entitled "Advertising the Hat Label," as appears on page 1114, and elsewhere of the record.

26. That the court erred in admitting to be read in evidence against the objection and exception of the defendants, an extract from the Danbury Evening News of April 9th, 1902, entitled "United Hatters sued. H. H. Roeloff of Philadelphia wants $250,000 damages," as appears on page 1124, and elsewhere of the record.

27. That the court erred in admitting to be read in evidence against the objection and exception of the defendants, an extract from the Danbury News for Friday, July 25th, 1902, 7632 entitled; "After Loewe Factory. The Hatters' Union will attempt to Unionize this Plant," as appears on page 1127, and elsewhere of the record.

28. That the court erred in admitting to be read in evidence against the objection and exception of the defendants, an extract from the Norwalk Hour for August 18th, 1900, entitled: "Wore non-union hats. An oversight made it necessary for two hatters to pay fines," as appears on page 1140 and elsewhere, of the record.

29. That the court erred in admitting to be read in evi- 7633
dence against the objections and exception of the defendants an extract from the South Norwalk Evening Sentinel for August 10, 1900, entitled; "Orange Hatters may Parade"; sub-title; "The Newark Evening News of Wednesday evening said"; as appears on page 1132 and elsewhere, of the printed record.

30. That the court erred in admitting to be read in evidence against the objection and exception of the defendants, an extract from the South Norwalk Evening Sentinel for August 15th, 1900, entitled; "Hatters on Strike. To make Connett Factory of Orange Fair instead of Open. Union men at Berg Shop," as appears on page 1134 and elsewhere, of 7634
record.

31. That the court erred in admitting the testimony on cross examination of one Nathan C. Hoy, against the objection and exception of the defendants, to the effect that said Hoy, one of the defendants, continued to pay local and national dues, so-called, after the service of the writ in this cause, and made no investigation of the truth of the matters set forth in the complaint and took no steps to prevent the re-election of the same officers as before.

32. That the court erred in admitting against the objection and exception of the defendants, the testimony on cross 7635
examination of the witness Bressen to the effect that after the service of the writ and complaint he continued to pay dues and made no effort to prevent the re-election of the same officers.

33. That the court erred in admitting against the objection and exception of the defendants, the testimony on cross examination of 160 defendants more or less, to the effect that they continued to pay dues after the service of the writ and complaint in this cause; that they made no investigation as to the truth of the matters alleged in the complaint and that they made no attempt to prevent the re-election of the same officers as before.

34. Tha the court erred in admitting to be read in evi- 7636
dence against the objection and exception of the defendants, an extract from the American Federationist for September, 1902, entitled; "National and International Unions Affiliated with the American Federation of Labor; headquarters at Washington, D. C., Samuel Gompers, President, Frank Morrison, Secretary," as appears on pages 224 to 230, inclusive of the record.

7637 35. That the court erred in admitting against the objection and exception of the defendants, a compiled list of declarations of unfairness of various concerns as found in the American Federationist from December 1898, to August 1903, as appears on pages 237 to 254 of the record.

36. That the court erred in admitting to be read in evidence against the objection and exception of the defendants, an editorial from the American Federationist of October 1899, entitled; "The Boycott as a Legitimate Weapon," as appears on page 268 and elsewhere, of the record.

7638 37. That the court erred in admiting to be read in evidence against the objection and exception of the defendants, from the October 1903 number of the American Federationist, an editorial by Samuel Gompers, entitled: "A Damage Suit or Prosecution to Scare or Intimidate us—Well!" as appears on page 963 and elsewhere, of the printed record.

38. That the court erred in admitting against the objection and exception of the defendants, the resolution adopted by the convention of the American Federation of Labor for the year 1908, entitled; "Resolution No. 99 by delegate Louis E. Kemper, of the United Brewery Workers of America," as appears on page 186 and elsewhere, of the printed record.

7639 39. That the court erred in admitting to be read in evidence as against the defendants not shown to have been present or to have known of or ratified the same, the following resolution presented to the convention of the American Federation of Labor held in 1901:

"Whereas, The United Hatters of North America are at the present time engaged in a strike of large proportions at the factory of Henry H. Roelof & Co., of Philadelphia, for the recognition of their union and for union conditions, and

"Whereas, It is of vital importance not only to the Hatters' organization, but also to organized labor in general, that

7640 the United Hatters of North America should be victorious in the fight they are making for the existence of their union, and

"Whereas, The United Hatters of North America have never refused to give assistance, financially or otherwise, to their brethren who have asked for it; therefore, be it

"Resolved, That this convention endorses and approves of the course pursued by the United Hatters of North America in their present fight against the wealthy concern that has declared it will never recognize any labor union.

"Resolved, That we call upon all the international, national and local unions affiliated with the American Federation of Labor to give all the assistance possible to the United Hatters of North America in the unequal fight which they are at present so manfully making against wrong and oppression, and we hereby pledge ourselves not to patronize any dealer or dealers who handle the product of non-union hatters and more particularly the product of the firm of Henry H. Roelof & Co., of Philadelphia, Pa." 7641

40. That the court erred in admitting to be read in evidence as against the defendants not shown to have been present or to have known of, or ratified the same, the following resolution adopted at the convention of the American Federation of Labor, held in 1899: 7642

"Whereas, The United Hatters of North America are at the present time engaged in a strike of large proportions at the factory of F. Berg & Co., Orange, N. J., for the recognition of their union, and for union conditions, and

"Whereas, This strike has now lasted about two months, and it is of vital importance, not only to the Hatters' organization, but also to organized labor in general, that the United Hatters of North America should be victorious in the fight which they are making for the existence of their union, and 7643

"Whereas, The United Hatters of North America have never refused to give assistance, financial and otherwise, to their brethren who have asked for it; therefore, be it

"Resolved, That this convention hereby endorses and approves of the course pursued by the United Hatters of North America in their present fight against the wealthy concern that has declared that it will never recognize any labor union.

"Resolved, That we call upon all the international, national and local unions affiliated with the American Federation of Labor to give assistance to the United Hatters of North America in the unequal fight which they are at present so manfully making against wrong and oppression, by refusing to patronize any dealer or dealers who handle the product of any non-union hatters, and more particularly, the product of the firm of F. Berg & Co., of Orange, N. J. Adopted." 7644

41. That the court erred in admitting in evidence as against all of the defendants, whether present at said convention or not, the several printed reports of the proceedings of the convention of the American Federation of Labor from and after the convention of 1903; to the admission of which in

7645 evidence and to the reading of extracts therefrom the defendants duly objected and to the ruling of the court in admitting the same the defendants duly excepted.

42. That the court erred in admitting in evidence the several volumes, issues and numbers of the magazine called The American Federationist, to be read in evidence as against all of the defendants irrespective as to whether they had knowledge of the contents thereof, and to the reading of extracts therefrom the defendants duly objected and excepted to the ruling of the court admitting the same.

43. That the court erred in admitting to be read in evi-
7646 dence the petition for leave to intervene in the argument in this cause before the Supreme Court of the United States in 1907, filed by the American Federation of Labor, the same being marked Exhibit 62, to the admission of which the defendants duly objected and excepted to the ruling of the court admitting the same; as appears on page 186 and elsewhere, of the printed record.

44. The court erred in admitting to be read in evidence against the objection and exception of the defendants, certain extracts from the report of the convention of the American Federation of Labor for the year 1885, entitled: "Resolution
7647 by Mr. Kirchner," as appears on pages 1112 and elsewhere of the printed record.

45. That the court erred in admitting in evidence as against all of the defendants whether present at said conventions or not, the several printed reports of the proceedings of the conventions of the American Federation of Labor prior to 1896.

46. That the court erred in admitting in evidence as against all of the defendants, whether present at said conventions or not, the several printed reports of the proceedings of the conventions of the American Federation prior to 1902;
7648 to the admission of which in evidence and to the reading of extracts therefrom the defendants duly objected and excepted to the ruling of the court admitting the same.

47. That the court erred in admitting as against all of the defendants, whether present at said conventions or not, the several printed reports of the proceedings of the conventions of The American Federation of Labor, to the admission of which in evidence and to the reading of extracts therefrom the defendants duly objected and excepted to the ruling of the court admitting the same.

48. That the court erred in admitting in evidence as against all of the defendants, whether present at said conventions or not, and irrespective of whether they had knowledge of the contents thereof, the several printed reports of the conventions of the United Hatters of North America for the years 1896, 1900, 1903 and 1907 respectively; to the admission of which in evidence and to the reading of extracts therefrom the defendants duly objected and excepted to the ruling of the court admitting the same. 7648

49. That the court erred in admitting in evidence as against all of the defendants, irrespective of whether they had knowledge of the contents thereof, the several issues of the magazine called The Journal of the United Hatters of North America"; to the admission of which in evidence and to the reading of extracts therefrom the defendants duly objected and excepted to the ruling of the court admitting the same. 7650

50. That the court erred in overruling the motion of the defendants to suppress the deposition of one Patrick Lynch, and erred in admitting to be read in evidence against the objection and exception of the defendants those portions of said deposition in which said Lynch declines to answer certain questions, on the ground that his answer might tend to incriminate him. 7651

51. That the court erred in overruling the defendants' motion to suppress the deposition of John J. Ford, and in admitting to be read in evidence against the objection and exception of the defendants those portions of said deposition in which the said Ford declined to answer certain questions on the ground that his answer might incriminate him.

52. That the court erred in overruling the defendants' motion to suppress the deposition of one Eugene F. Riley, and erred in admitting to be read in evidence against the objection and exception of the defendants, those portions of said deposition in which said Riley declined to answer certain questions on the ground that his answers might incriminate him. 7652

53. That the court erred in admitting to be read in evidence against the objection and exception of the defendants, a letter from one Thomas D. Stokes to D. E. Loewe, dated Richmond, Va., December 2, 1902, as appears on page 516 and elsewhere of the printed record.

54. That the court erred in permitting to be read in evidence against the defendants' objection and exception, the fol-

7653 lowing questions and answers from the deposition of said Stokes: "Did you not associate the publication of that matter concerning your concern with certain developments or events in connection with the whole thing? A. About that time, or probably a little afterwards, I was told by our city salesman that he found it practically impossible to sell our goods on this market. Q. Can you state why? A. Because if the retailers bought goods from us they thought they would be injured in their business by the loss of patronage from labor unions."

7654 55. That the court erred in admitting to be read in evidence against the objection and exception of the defendants, a letter from Thomas D. Stokes to D. E. Loewe, dated Richmond, Va., Jan. 20, 1903, as appears on page 525 and elsewhere of the printed record.

56. That the court erred in admitting to be read in evidence against the objection and exception of the defendants, a letter from Longley, Lowe & Alexander to D. E. Loewe, dated February 24, 1903, as appears on page 552 and elsewhere of the printed record.

7655 57. That the court erred in admitting to be read in evidence against the objection and exception of the defendants, a letter written by the plaintiff, D. E. Loewe to James P. Maher in November, 1900, as appears on page 981 and elsewhere, of the printed record.

58. That the court erred in admitting against the objection and exception of the defendants, the plaintiff Loewe to testify as to what he said to his employes on or about the 26th day of July, 1902, for the purpose of inducing them to remain in his employment, as appears on pages 1013, 1014, and elsewhere, of the printed record.

7656 59. That the court erred in admitting the plaintiff Loewe to testify against the objection and exception of the defendants, that one James Gildea, told the plaintiff that Mr. Maher, one of the defendants, had stated at a certain meeting attended by said Gildea, that: "We have got them, because our agents are ready, and we will send them on the road, and they will ruin his (meaning the plaintiff's) business. If he should furnish his factory with non-union men to the roof, it won't do him any good; our agents are ready, and we will ruin him."

60. That the court erred in admitting to be read in evidence against the objection and exception of the defendants, a

letter written by the plaintiff, Loewe, to James P. Maher, about April 22, 1901, as appears on page 996 and elsewhere, of the printed record. 7657

61. That the court erred in admitting to be read in evidence against the objection and exception of the defendants, a so-called "warning"; "To the Members of all Labor Unions," as appears on page 720 and elsewhere, of the printed record.

62. That the court erred in admitting to be read in evidence against the objection and exception of the defendants, an alleged copy of an injunction said to have been issued by a Massachusetts Court, as appears on page 721 and elsewhere, of the printed record. 7658

63. That the court erred in admitting against the objection and exception of the defendants, the evidence of the plaintiff, Loewe, as to the amount of business done with the plaintiffs' customers for the calendar year of 1900, the calendar year of 1901, the calendar year of 1902 and the calendar year of 1903.

64. That the court erred in admitting to be read in evidence a list of the plaintiffs' customers and of the amounts of business done with each of said customers for the year 1904, as appears on pages 1054 to 1059 inclusive, of the printed record. 7659

65. That the court erred in admitting to be read in evidence against the objection and exception of the defendants, the statement of profit and loss of the plaintiffs' business for the year ending December 31, 1904, as appears on pages 1073 and 1074 of the printed record.

66. That the court erred in admitting to be read in evidence against the objection and exception of the defendants, from the deposition of one Savanah, a salesman employed by Triest & Co. of San Francisco, California, that one Smith, a customer of said Triest & Co. refused to buy hats, and stated as a reason for not buying: "That he was intimidated by the labor representatives, on account of a boycott. He even went so far as to state that he would gladly buy, if he were allowed to." 7660

67. That the court erred in admitting to be read from said deposition of Michael Savanah, against the objection and exception of the defendants, the statement that "one Jonas said

7661 to him that he was afraid to buy on account of the boycott, and also stated that he had one of his employes there, who is a prominent member of the Oakland Labor Council," who he was afraid to antagonize."

68. That the court erred in admitting to be read in evidence against the objection and exception of the defendants, from the deposition of one Ben Rosenthal, a salesman employed by Triest & Co. of San Francisco, the statement that one H. G. Wessels, a customer of said Triest & Co. told him (Rosenthal); "We don't want to deal while there is a boycott
7662 on. They want union goods, and this man come around and told us to handle union goods." "Did they state why the visit of Mr. Hennelly should prevent their patronizing your house? A. Well, he said they were afraid of being boycotted, and they were getting circulars."

69. That the court erred in admitting to be read against the objection and exception of the defendants, from the deposition of Frank Triest, the statement that one Karl Steinhart, a customer of said Triest, refused to buy hats, giving as a reason, the receipt of notices from the unions; and in that con-
7663 nection, the following question and answer: "Did any conversation arise at this time as to why the receipt of these circulars should induce the I. X. L. to cease dealing with Triest & Co.? A. They were afraid of a boycott themselves."

70. That the court erred in admitting to be read in evidence from the deposition of said Triest, against the objection and exception of the defendants, evidence to the effect that S. Dannebaum & Co. refused to buy hats, and stated that said refusal was; "On account of receiving notice that Triest & Co. were boycotted; at the same time the Union men of Valejo calling on them and notifying them that they should not pur-
7664 chase hats from Triest & Co., under a threat of being boycotted themselves."

71. That the court erred in admitting against the objection and exception of the defendants, the testimony of one Middlekauff, a customer of the plaintiffs, as to the reason his (Middlekauff's) customers gave to him for refusing to buy the Loewe goods as follows: "When I would go to sell them, they would tell me that they were afraid to buy the goods because of fear of being blacklisted by the local unions They had been visited by some of them at times."

7665

(CITATION.)

THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SECOND CIRCUIT.

The United States of America, Second Judicial Circuit, ss:

7666 To Dietrich E. Loewe and Martin Fuchs, partners in business under the firm name of D. E. Loewe & Co. and both of the Town of Danbury, Fairfield County, Connecticut, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals, for the Second Circuit, to be holden at the City of New York, in said Circuit, on the.....day of January, 1913 next, pursuant to a writ of error, filed in the Clerk's office, of the District Court of the United States for the District of Connecticut, wherein you are defendants in error, and William P. Bailey, Charles Bailey, Frederick 7667 Benedict, John Cords, Virgil Dibble, T. Archibald Evans, Charles Frost, Howard S. Gilbert, George H. Gilbert, Charles Greene, John Halpin, Reuben Johnson, Henry C. Judd, John L. Kane, Martin Lawlor, Charles Lathrop, George W. Morehouse, Byron Morgan, Barney Murphy, Owen Murray, William Ochs, William Ohler, Levi Short, Orrin Smith, William Stone, Myron Trowbridge, Patrick Troy, of Bethel, Connecticut; Theophilus Abieniste, Andrew Aitken, Nicholas W. Allen, Thomas H. Allen, Daniel H. Barnes, Nicholas W. Barzin, Clemens Beschele, Frederick S. Blackburn, John Blake, Simon Blake, Herman H. 7668 Bohman, Nelson H. Booth, James N. Boughey, Thomas Boyd, John Bradshaw, Peter J. Brennan, Alphonse Bresson, Theodore Bright, Byron S. Brooks, Andrew G. Brown, Chauncey H. Butler, James P. Callahan, John J. Callahan, Achille Canale, Thomas J. Cassidy, William Clancy, Elmer R. Clark, John H. Collins, Lewy W. Comes,

Citation.

7669 Patrick Connolly, Michael Corbett, James D. Costello, John H. Craft, Byron W. Crane, James Crotty, John Crotty, Peter T. Currie, William Deakin, George F. Denton, James Dillion, William S. Dutcher, John Dyer, John Ellegett, Patrick Ellegett, Carl Erdman, Timothy H. Farrell, Patrick J. Feeley, Patrick J. Fisher, Emil Floyske, Thomas Foley, Peter Gallagher, Christian Gottlieb Garni, William E. Gartner, Martin Gorman, Michael C. Griffin, Wright Hampson, David J. Hardy, Alexander Harkness, John Harkness, Patrick Hart, John Hassett, Stephen Havran, Michael Hennessy, George M. Herrick, Charles A. Hodge, Adolph Holdeichel, Nathan C.

7670 Hoy, William Humphries, Patrick F. Hunt, Charles W. Hurd, Michael Hurd, Patrick E. Jaffrey, Daniel Kearns, Martin Keating, Thomas Keenan, Daniel P. Kelly, Michael F. Kenney, John Keogh, Charles J. King, Frank Kornhass, Frank E. Krebs, Martin Lauf, Edward D. Lees, John Leonard, Thomas Leonard, Michael F. Lynch, John Morris, Jeremiah McCarthy, Patrick J. McCarthy, Patrick T. McCarthy, Martin McCue, Thomas E. McGauley, Martin McGettrick, James F. McGlone, John McGlone, Peter McGlone, Patrick McGrath, Charles F. McHan, Thomas McHugh, Daniel McInerey, Frank

7671 Meath, Henry Messer, Henry C. Michael, George J. Miller, Gustav Mougin, Eugene L. Mulkin, Daniel Murphy, Timothy Murray, John B. Nowlan, William V. Nowlan, George T. Oakley, Peter O'Boy, Louis E. Orton, Daniel J. Osborne, Alvah S. Pearce, George H. Phillips, Peter Picken, Arthur I. Pickett, John Pribula, Jacob Prinz, Christian Rheinhold, Frank Rode, Frank E. Seaman, Hugh C. Shalvoy, Charles Shaffer, Frederic L. Stahl, George Stuckey, Michael E. Sullivan, William S. Sullivan, Joseph Tosi, Thomas E. Waters, Samuel S. Wilson, Frank K. Wildman, all of Danbury, Connecticut; Fanton W. Beers, Albert Berg, William A. Brennan,

7672 Stephen Carlin, Edward Cunningham, George A. Davis, Charles Flynn, Adison Hathaway, Peter F. Kearney, Patrick Keating, James Kinnane, Thomas Layhe, Charles Moore, S. Wallace Osborn, John E. Paul, Robert Pearson, John Redway, Owen Reilley, Daniel Riodan, John E. Rooney, Thomas F. Saunders, John W. Sculley, Max Singerwold, Charles Smith, Frederick Taylor, Peter Ward, William J. Weisheit, James Whitney, all of Norwalk, Connecticut, are plaintiffs in error, to show cause, if any there be, why the judgment rendered against the said defendants in error, as in the said writ of

error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf. 7673

Dated at Hartford, in the District of Connecticut, this ....day of....January...., 1913...

.....James L. Martin, Judge.

Due and lawful service of the above and foregoing citation is hereby acknowledged, and accepted.

Jan 29 1913

Walter Gerdon Merritt
Of Counsel for Plaintiffs.

7674

(CLERK'S CERTIFICATE.)

"United States of America, District of Connecticut, ss.

I, Edwin E. Marvin, Clerk of the District Court of the United States for the District of Connecticut, do certify that the foregoing pages from folio 13 in Volume I, to folio 7665 in Volume V, contains a true return of the record and proceedings in this court in a cause entitled Martin Lawlor et al., plaintiffs in error (defendants below), against D. E. Loewe et al. defendants in error (paintiffs below), as the same remains of record and on file in my office.

I further certify that my fees for recording the said bill of exceptions and making this return transcript amount in the whole to the sum of $15.62.55., which have been paid to me by the attorneys for the plaintiffs in error.

In Witness Whereof I have hereunto set my hand and official seal this 29. day of February, A. D. 1913.

E. E. Marvin,
Clerk."

United States Circuit Court of Appeals for the Second Circuit, October Term, 1913.

766

No. 32.

Argued November 18, 1913; Decided December 18, 1913.

MARTIN LAWLOR et al., Plaintiffs-in-Error (Defendants Below),
vs.
D. E. LOEWE et al., Defendants-in-Error (Plaintiffs Below).

In Error to the District Court of the United States for the District of Connecticut.

767

Before Coxe, Ward, and Rogers, Circuit Judges.

On writ of error to the District Court for the District of Connecticut to review a judgment entered November 15, 1912, in favor of the plaintiffs and against the defendants for $252,130, being the amount of a trebled verdict, interest, costs and counsel fees. This controversy has been before the courts for nearly a decade. It first appears in the reports in 130 Fed. Rep. 633, where a demurrer to a plea in abatement was sustained. A motion to compel the plaintiffs to correct their complaint was denied in 142 Id. 216. And in 148 Id. a demurrer to the complaint was sustained upon the ground that the complaint did not allege an interference with interstate commerce.

767 From this decision a writ of error brought the case to this court which, after stating the facts, certified to the Supreme Court the following question:

"Upon this state of facts can plaintiffs maintain an action against defendants under Section 7 of the Anti-Trust Act of July 20, 1890?"

Both sides joined in asking that the entire record be sent to the Supreme Court, which was done and the case came before that tribunal upon the complaint and demurrer. Under Sec. 6 of the Judiciary Act of 1891 the court was called upon to "decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal."

In an elaborate opinion by Chief Justice Fuller the court decided

767 that the complaint stated a case within the statute and overruled the demurrer. 208 U. S. 274.

The case then came on for trial upon the merits on October 13, 1909, and, with various adjournments, lasted until February 4, 1910, when the court directed a verdict for the plaintiffs, sending to the jury the question of damages only, which they assessed at $74,000, which was trebled under the law.

The defendant then sued out a writ of error and this court, being of the opinion that the question of the defendants' liability should have been submitted to the jury, reversed the judgment and remanded the case for a new trial. A petition for a rehearing was denied by this court, 187 Fed. 522, 527. The plaintiffs thereafter

petitioned the Supreme Court for a writ of certiorari which was denied, 223 U. S. 729. The new trial was commenced on August 26, 1912, and on October 11th a verdict was rendered for the full amount demanded. The sections of the Anti-Trust Act which are involved are the first, second and seventh. They are as follows:

"1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any Circuit Court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover three fold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee."

The parties will be alluded to hereafter as plaintiffs and defendants as they appeared in the District Court.

Alton B. Parker and Frank L. Mulholland, for Plaintiffs-in-Error.

Daniel Davenport and Walter Gordon Merritt, for Defendants-in-Error.

COXE, *J.*:

When this cause came on for the second trial all of the fundamental questions of law had been disposed of. That the Anti-Trust Act is applicable to such combinations as are alleged in the complaint is no longer debatable. It makes no distinction between classes, employers and employees, corporations and individuals, rich and poor, are alike included in its terms. The Supreme Court particularly points out that although Congress was frequently importuned to exempt farmers' organizations and labor unions from its provisions, these efforts all failed and the Act still remains, after nearly a quarter of a century of trial, unmarred by amendment, in the language originally adopted. In short, the court held that if the plaintiffs proved the conspiracy or combination as alleged in the complaint, they were within the Anti-Trust Act and entitled to the damages sustained by them.

The plaintiffs proved, either without contradiction or by testimony

which the jury was justified in accepting as true, the following propositions:

First. That they were engaged in making hats at Danbury, Connecticut, and had a large interstate business, employing union and non-union labor.

Second. That the individual defendants are members of a trade union known as the United Hatters of North America, which was organized in 1896 and, with a few exceptions unnecessary to consider, paid dues to the local unions at Danbury, Bethel or Norwalk, Connecticut. These dues, after deducting a certain percentage for the expenses of the local unions, were sent to the treasurer of the United Hatters.

Third. That the United Hatters were affiliated with the American Federation of Labor, one of the objects of the latter organization being to assist its members in any "justifiable boycott" and with financial help in the event of a strike or lockout.

Fourth. That The United Hatters, through their connection with the Federation of Labor and affiliated associations, exercised a vast influence throughout the country and, by the use of the boycott and secondary boycott, had it in their power to cripple, if not destroy, any manufacturer who refused to discharge a competent servant because he was not a member of the union.

Fifth. That in March, 1901, the United Hatters had resolved to unionize the plaintiff's factory and informed Mr. Loewe to that effect, their president stating that they hoped to accomplish this in a peaceful manner, but if not, they would resort to their "usual methods."

Sixth. That on the morning of July 25, 1902, the plaintiffs' employees were directed to strike and the union men left the factory on that day, the non-union men the day after.

Seventh. That this strike temporarily paralyzed the plaintiffs' business and they were not able to reorganize until January, 1903, and then with a force many of whom were unskilled.

Eighth. That almost immediately after the strike a boycott was established and agents of the Hatters were sent out to induce the plaintiffs' customers not to buy any more hats of them. This boycott was successful, and converted a profit of $27,000 made in 1901 into losses ranging from $17,000 in 1902 to $8,000 in 1904, destroying or curtailing a large part of their business carried on between Danbury, Connecticut, and several other states.

It appears, then, that a combination or conspiracy in restraint of interstate trade was entered into to the great damage of the plaintiffs and that all of the defendants who participated therein or aided and abetted the active workers in the conspiracy or contributed to its support are liable if they knew of its existence.

The principal question of fact, therefore, is, did the defendants know of the conspiracy or is the evidence of such a character that the jury were justified in finding that they must have known of its existence? And here it is important to remember that the law does not require the proof of conspiracy by direct and positive proof. This is true even in criminal cases and the reason therefor is plain. Conspirators do not put their agreements in writing; they do not dis-

close their identity or publish their plans. They work in the dark, they may never be seen together, their acts may have no apparent relation to each other, but if it appears that they are all working to accomplish an unlawful purpose which is for their common benefit and in the gains of which all are to share, a jury is justified in finding the existence of a conspiracy. A conspiracy has been well defined as "A combination between two or more persons to do a criminal or an unlawful act or a lawful act by criminal or unlawful means."

8 Cyc. 620.

It is not necessary that there be a formal agreement between the conspirators. If the evidence satisfies the jury that they acted in concert, understandingly and with the design to consummate an unlawful purpose, it is sufficient. It is not necessary that each conspirator shall know of all of the means employed to carry out the purposes of the conspiracy. If then, the evidence is sufficient to warrant the jury in finding that the defendants knew of the unlawful purpose, by means of boycotts and strikes, to destroy the interstate business of the plaintiffs and thereafter continued to aid and abet such purpose, it is sufficient.

Pettibone vs. U. S., 148 U. S. 197;
U. S. vs. Cassidy, 67 Fed. Rep. 698.

As to the defendants who were in the employ of the plaintiffs at the time of the strike and participated therein, we understand that it is not pretended that they were ignorant of the general purpose of the United Hatters. As to the remainder, estimated by the defendants' counsel to be about ninety per cent., it is contended that they knew nothing of the purpose of the strike except that it was "to establish union conditions in that particular (Loewe's) factory."

The plaintiffs insist that the measures adopted by the United Hatters for establishing "union conditions" were well known to every member of the organization, as they had been frequently enforced before. The plaintiffs assert that every member of the union knew that these measures consisted in calling a strike, and if that failed then in declaring a boycott and withdrawing patronage from all who dealt in the prohibited goods. To accomplish these ends it had been customary in the past to send so-called "missionaries" to the customers of the manufacturer throughout the country to induce them to refuse to handle his goods under threat of the destruction of their own business if they refused.

The defendants reside at Bethel, Norwalk or Danbury, all in the same general locality and so near that it is highly improbable that an event of vital importance to one union would not be known to the other two. But in order to show that the dispute between Loewe and the union excited general interest in the community, newspaper articles published in these towns were introduced in evidence, not as proof of the circumstances therein narrated but to show the improbability of the defendants being ignorant of matters which were constantly being made public and were of vital significance to them,

relating as they did, to a controversy which might impair or destr
their own means of livelihood. As to one hundred and fifteen of t
defendants it was stipulated that if called as witnesses they wou
testify "that they read with more or less regularity some local new
papers in their respective towns, but not completely or invariably
As to the Journal of the United Hatters, it was stipulated that t
secretaries of the local unions in question received copies which we
distributed in the various factories without charge, so that the wor
men there could read them if they desired to do so. The plaintif
introduced the minutes of the meetings of the local unions of whic
the defendants were members; also extracts from the Federationis
a monthly journal of the Federation of Labor and a Notice, warnin
all members of labor unions that they would be held responsible f
unlawful acts of such unions, their officers and agents. A copy
this notice was sent to all hatters whose names appeared in the Da
bury Directory. It cannot be denied that all this evidence was com
petent as to those who actually received it or had knowledge of
and we think it was for the jury to say whether it was sufficient
put the alleged conspirators upon notice of the illegal measures b
which it was proposed to enforce the demands of the defendants.

We do not deem it necessary to deal with each of these pieces o
evidence separately, principally because, in our judgment, such a
analysis would be a wholly inadequate and indeterminate procedure
It may be that many of the items considered alone failed to give th
adequate information, but considered in its entirety have not th
plaintiffs shown a situation where the jury were justified in findin
that the members of the unions knew what was being done? A bitte
and acrimonious dispute was being waged between employers and
employees in a comparatively small community. It was a dispute
which involved loss of employment on the one side and the loss of a
flourishing business on the other. The progress of the controversy
was described in the local press and in the papers published by the
unions. Was it not clearly a question of fact for the jury to say
whether the defendants, thus vitally interested, could have remained
ignorant of the measures adopted by their own societies in their be-
half? We are clearly of the opinion that it was.

The learned counsel for the defendants argue, and cite numerous
cases to sustain the contention, that labor unions are lawful. No one
disputes this proposition. All must admit, not only that they are
lawful, but highly beneficial when legally and fairly conducted, but
like all other combinations, irrespective of their objects and purposes,
they must obey the law.

Any discussion of these questions is rendered unnecessary by the
decision of the Supreme Court overruling the demurrer. That the
complaint states a cause of action is no longer debatable. The ques-
tion is, does the testimony sustain the allegations? Without at-
tempting to review the testimony in detail, it suffices to say that the
jury were fully justified in finding that the measures adopted by the
defendants prevented the free flow of commerce between the states.
The great bulk of the plaintiffs' business was in states other than
Connecticut, to which states the product of their factory was shipped

and the proof shows that they suffered great pecuniary loss, equal at least to the amount found by the jury, because of their inability to sell to their interstate customers.

The court charged the jury as follows:

"Now if this evidence falls short of satisfying you that certain of these defendants did know of this unlawful conspiracy, or were in duty bound to know of it, or did tacitly approve of it, then such defendants should be acquitted, if any there may be; or, in other words, assuming that there was a conspiracy to violate the Federal statute, as I have explained to you, and that the statute was, in fact, violated, to the damage of the plaintiffs, then every person who had a part in planning or a hand in executing, or aided, or abetted therein, is jointly liable. Membership in a Labor Union and the payment of dues, are not acts of themselves that necessarily constitute counselling, advising, aiding or abetting. Membership and payment of dues are the life of the voluntary association, and are the foundation of all its authority and the source of financial assistance in executing that authority.

If these members paid their dues and continued to delegate authority to their officers and agents to commit unlawful deeds, which, in this case, is the interference with the plaintiffs' interstate trade and commerce, under such circumstances as lead you to believe that they knew, or ought to have known, and that such officers and agents were, in that matter, warranted in the belief that they were acting within their delegated authority, then such members are jointly liable, and no others."

The defendants excepted to this charge, and have presented the question by proper assignments of error. The principal criticism of the charge is directed to the use of the words "or ought to have known" in the last paragraph quoted above. If these words had been used alone, with no qualification or explanation, there might be some room for criticism, but when considered in connection with the rest of the charge, we are entirely satisfied that the jury could not have been misled. As previously pointed out, in cases of conspiracy it is sufficient if a state of facts be shown from which the jury are justified in drawing the conclusion that the defendants must have known of the existence of the conspiracy. It was in this sense that the judge used the words "ought to have known." He left to the jury the question which the judge, on the preceding trial regarded as established by such overwhelming proof that he decided it as matter of law, viz: Did the defendants know of the combination to destroy the plaintiffs' business?

In cases where actual knowledge is not shown, the question is, was the proof of such a character that the jury was justified in finding that a member of the local unions in good standing, attending their meetings, paying his dues, having access to their publications, knowing their methods and having struck with his fellow members because of the plaintiffs' refusal to be dictated to by the union as to the manner in which their business should be conducted, must have known what was being done? A soldier who with his regiment

charges the enemy's line can hardly be heard to assert that he did not know a battle was in progress.

In Martin v. Webb, 110 U. S. 7, Mr. Justice Harlan says at page 15:

"Directors cannot, in justice to those who deal with the bank, shut their eyes to what is going on around them. It is their duty to use ordinary diligence in ascertaining the condition of its business, and to exercise reasonable control and supervision of its officers. They have something more to do than, from time to time, to elect the officers of the bank, and to make declarations of dividends. That which they ought, by proper diligence, to have known as to the general course of business in the bank, they may be presumed to have known in any contest between the corporation and those who are justified by the circumstances in dealing with its officers upon the basis of that course of business."

It is true that in our former opinion we said that testimony of the payment of dues by the defendants after the complaint was served was inadmissible, but we do not think that this ruling applies to the testimony of Hoy and Bressen, for the reason that the answers of these witnesses that they continued members after the suit was commenced, elicited on cross-examination, were admitted "solely as a matter of cross-examination bearing upon the truthfulness of the testimony in chief." That it was proper for this purpose we have no doubt. In order to understand the attitude of the witnesses to the controversy and to the parties, it was competent to show what their relations were to the parties. The plaintiffs on cross-examination had the same right to show that the witness was a member of the local union in good standing, as the defendants would have to show that a witness called by the plaintiffs was a partner in their firm. In either case the testimony shows the jury what manner of man the witness is and what interest he has in the result.

We see no error in the admission of testimony showing damages accruing after the commencement of the action. It must be admitted that it is for the interest of all parties that this controversy be disposed of finally in a single action. If a plurality of actions are brought the defendants will have good ground for the complaint that they are subjected to unnecessary expense and annoyance by being compelled to defend a second action, the trial of which will consume several months. The charge of persecution in such circumstances would not be without justification.

The judge charged the jury on this subject as follows:

"The only acts of the defendants for which the plaintiffs may recover damages in this case are such acts as are set forth in the complaint and as were done by the defendants or their agents before the suit was commenced, and the plaintiffs are entitled to recover all damages which are the proximate and natural result of such acts, including such damages as may have continued or resulted therefrom after the suit was commenced by the plaintiffs, but cannot recover in this suit for any damages which are the result of the continuation of the alleged conspiracy after the suit was commenced

or which are the result of the performance of any acts in furtherance of said conspiracy after the suit was commenced."

We think this instruction states the rule correctly; it is based upon authority and common sense. The trial proceeded throughout upon the theory that the only acts of the defendants for which a recovery could be had must have taken place before the suit and must have been acts alleged in the complaint. Damages resulting or continuing from such previous acts might be recovered in the present suit, but no damages resulting from acts committed in furtherance of the conspiracy after the commencement of the suit could be so recovered. In other words, if the damages due to acts done previous to the suit continued thereafter, the plaintiffs could recover, but they could not recover for acts subsequent to the suit or for damages resulting from a continuance of the conspiracy after the commencement of the suit. Assuming that the suit was commenced September 30, 1903, the plaintiffs were permitted to recover damages for acts done prior to September 30, although the damages resulting therefrom continued after that date. The plaintiffs were not permitted to recover damages resulting from the continuation of the conspiracy after September 30, and they were not permitted to recover damages resulting from an act done after September 30, 1903.

We see no error in the charge or in the rulings of the judge upon these questions, which rulings are sustained by the following authorities:

New York etc. R. Co. vs. Estill, 147 U. S. 591;
Occidental Con. Mining Co. vs. Comstock Co., 125 Fed. Rep. 244;
Cooper vs. Sillers, 30 App. Dist. Col. 567.

Other exceptions were taken which are argued in the defendants' brief, but we do not deem it necessary to discuss them further than we have already done, in view of the decision of the Supreme Court and our own previous decision.

No one can examine this voluminous record without being impressed with the fact that the trial was conducted with perfect impartiality and with a determination on the part of the judge that both parties should have an absolutely fair trial. We are convinced that the defendants have had such a trial and that no error was committed which would justify us in imposing upon the parties the expense and delay of a third trial.

The judgment is affirmed with costs.

At a Stated Term of the United States Circuit Court of Appeals in and for the Second Circuit, Held at the Court Rooms in the Post Office Building in the City of New York on the 29th Day of December, One Thousand Nine Hundred and Thirteen.

Present:

Hon. Alfred G. Coxe,
Hon. Henry G. Ward,
Hon. Henry Wade Rogers,
Circuit Judges.

MARTIN LAWLOR et al., Plaintiffs in Error,
vs.
D. E. LOEWE et al., Defendants in Error.

Error to the District Court of the United States for the District of Connecticut.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the District of Connecticut, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the judgment of said District Court be and it hereby is affirmed with costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

H. G. W.

Endorsed: United States Circuit Court of Appeals, Second Circuit. Martin Lawlor et al. vs. D. E. Loewe et al. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Dec. 29, 1913. William Parkin, Clerk.

In the United States Circuit Court of Appeals, Second Circuit.

At Law. No. 32.

MARTIN LAWLOR et al., Plaintiffs in Error,
v.
D. E. LOEWE et al., Defendants in Error.

Petition for Writ of Error and Order Allowing Writ.

Now come the defendants in the above entitled cause, William P. Bailey, Charles Bailey, Frederick Benedict, John Cords, Virgil Dibble, T. Archibald Evans, Charles Frost, Howard S. Gilbert, George H. Gilbert, Charles Green, John Halpin, Reuben Johnson, Henry C. Judd, John L. Kane, Martin Lawlor, Charles Lathrop, George W. Morehouse, Byron Morgan, Barney Murphy, Owen Murray, William Ochs, William Ohler, Levi Short, Orrin Smith, William Stone,

Myron Trowbridge, Patrick Troy, of Bethel, Connecticut; Theophilus Abieniste, Andrew Aitken, Nicholas W. Allen, Thomas H. Allen, Daniel H. Barnes, Nicholas W. Barzin, Clemens Beschele, Frederick S. Blackburn, John Blake, Simon Blake, Herman H. Bohman, Nelson H. Booth, James N. Boughey, Thomas Boyd, Thomas Boyd, John Bradshaw, Peter J. Brennan, Alphonse Bresson, Theodore Bright, Byron S. Brooks, Andrew G. Brown, Chauncey H. Butler, James P. Callahan, Achille Canale, Thomas J. Cassidy, William Clancy, Elmer R. Clark, John J. Collins, Lewy W. Comes, Patrick Connolly, Michael Corbett, James D. Costello, John H. Craft, Byron W. Crane, James Crotty, John Crotty, Peter T. Currie, William Deakin, George F. Denton, James Dillon, William S. Duther, John Dyer, John Ellegett, Patrick Ellegett, Carl Erdman, Timothy H. Farrell, Patrick J. Feeley, Patrick J. Fisher, Emil Floyske, Thomas Foley, Peter Gallagher, Christian Gottlieb Garni, William E. Gartner, Martin Gorman, Michael C. Griffin, Wright Hampson, David J. Hardy, Alexander Harkness, John Harkness, Patrick Hart, John Hassett, Stephen Havren, Michael Hennessy, George M. Herrick, Charles A. Hodge, Adolph Holdeichel, Nathan C. Hoy, William Humphries, Patrick F. Hunt, Charles W. Hurd, Michael Hurd, Patrick E. Jeffrey, Daniel Kearns, Martin Keating, Thomas Keenan, Daniel P. Kelley, Michael F. Kenney, John Keogh, Charles J. King, Frank Kornhass, Frank E. Krebs, Martin Lauf, Edward C. Lees, John Leonard, Thomas Leonard, Michael F. Lynch, John Morris, Jeremiah McCarthy, Patrick J. McCarthy, Patrick T. McCarthy, Martin McCue, Thomas E. McCauley, Martin McGettrick, James F. McGlone, John McGlone, Peter McGlone, Patrick McGrath, Charles F. McHan, Thomas McHugh, Daniel McInerey, Frank Meath, Henry Messer, Henry C. Michael, George J. Miller, Gustave Mougin, Eugene L. Mulkin, Daniel Murphy, Timothy Murray, John B. Nowlan, William V. Nowlan, George T. Oakley, Peter O'Boy, Louis E. Orton, Daniel J. Osborne, Alvah S. Pearse, George H. Phillips, Peter Picken, Arthur I. Pickett, John Pribula, Jacob Prinz, Christian Rheinhold, Frank Rhode, Frank E. Seaman, Hugh C. Shalvoy, Charles Shaffer, Frederick L. Stahl, George Stuckey, Michael H. Sullivan, William S. Sullivan, Joseph Tosi, Thomas E. Waters, Samuel S. Wilson, Frank K. Wildman, All of Danbury, Connecticut; Fenton W. Beers, Albert Berg, William A. Brennan, Stephen Carlin, Edward Cunningham, George A. Davis, Charles Flynn, Addison Hathaway, Peter F. Kearney, Patrick Keating, James Kinnane, Thomas Layhe, Charles Moore, S. Wallace Osborn, John E. Paul, Robert Pearson, John Redway, Owen Reilley, Daniel Rioden, John F. Rooney, Thomas F. Saunders, John W. Sculley, Max Singerwald, Charles Smith, Frederick Taylor, Peter Ward, William J. Weisheit, James Whitney, all of Norwalk Connecticut, by their attorneys herein, Alton B. Parker, Esq., and Frank L. Mulholland, Esq., and respectfully shows that a final judgment has been rendered in the above-entitled cause by the said court on the 29th day of December, 1913, affirming the judgment of the District Court of the United States for the District of Connecticut, and that the matter in controversy in said suit exceeds

one thousand dollars, besides costs, and that the jurisdiction of none of the courts above mentioned is or was dependent in anywise upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of the different states, and that this cause does not arise under the patent laws, nor the revenue laws, nor the criminal laws, and that it is not an admiralty case, and that it is a proper case to be reviewed by the Supreme Court of the United States upon writ of error.

That in said judgment and the proceedings herein had prior thereto, in this cause, certain errors were committed to the prejudice of these defendants, all of which will more in detail appear from the assignment of errors, which are on file with this petition.

Therefore the defendants pray an order of this court allowing said defendants to prosecute a writ of error to the Supreme Court of the United States and that a writ of error may issue in this behalf for the correction of the errors so complained of and in accordance with the laws of the United States in that behalf made and provided, and that a transcript of the record, proceedings and papers in this case, duly authenticated, may be sent to the Supreme Court of the United States, and that an order be made herein fixing the amount of security which the defendants shall give and furnish upon said writ of error and upon the giving of such security all further proceedings in this court be suspended and stayed, until the determination of said writ of error in the said Supreme Court of the United States, and your petitioners will ever pray.

ALTON B. PARKER,
FRANK L. MULHOLLAND,
Attorneys for Plaintiffs in Error.

It is ordered that the writ of error above prayed for be allowed this 12th day of January, 1914.

(Sgd.) ALFRED C. COXE,
Judge of the Circuit Court of Appeals for the Second Circuit.

(Endorsed:) United States Circuit Court of Appeals, Second Circuit. At Law. No. 32. Martin Lawlor et al., Plaintiffs in Error, v. D. E. Loewe et al., defendants in error. Petition for Writ of Error and Order Allowing Writ. Alton B. Parker, 111 Broadway, New York City; Frank L. Mulholland, Nichols Building, Toledo, Ohio, Attorneys for Plaintiffs in Error. United States Circuit Court of Appeals, Second Circuit. Filed Jan. 12, 1914. William Parkin, Clerk.

The United States Circuit Court of Appeals, Second Circuit.

At Law. No. 32.

MARTIN LAWLOR et al., Plaintiffs in Error,
v.
D. E. LOEWE et al., Defendants in Error.

Assignments of Error and Prayer for Reversal.

And now come the defendants in the above-entitled cause, by Alton B. Parker and Frank L. Mulholland, their attorneys, and pray for a reversal of the judgment entered herein by the United States Circuit Court of Appeals for the Second Circuit on the 29th day of December, 1913, affirming the judgment of the District Court of the United States for the District of Connecticut for $252,130.90 entered on the 15th day of November, 1912, in favor of the defendants in error (plaintiffs) and against the plaintiffs in error (defendants) and as grounds for reversal set forth and file the following assignments of error, upon which they and each of them rely upon their and his prosecution of the writ of error in the above entitled cause:

1. That the court erred in sustaining the refusal of the district court to charge the jury as requested in the first paragraph of the defendants' requests to charge as follows:

"1. The combination charged in the complaint falls within the class of restraints of trade aimed at compelling third parties and strangers involuntarily not to engage in the course of trade, except on conditions that the combination imposes."

2. That the court erred in sustaining the refusal of the district court to charge the jury as requested in the second paragraph of the defendants' request to charge as follows:

"2. The combination charged in the complaint is a combination directly for the purpose of preventing the plaintiffs and their customers, in other states, against their will, from continuing to carry on an existing trade and commerce among the several states, and in preventing them from engaging in and carrying on said trade and commerce between them."

3. That the court erred in sustaining the refusal of the district court to charge the jury as requested in the third paragraph of the defendants' requests to charge as follows:

"3. To be entitled to any recovery in this action the plaintiffs must show that a combination or conspiracy was formed for the direct purpose of compelling the plaintiffs and others involuntarily not to deal together in the course of interstate trade, and must also show that they were injured in their property or business by reason of such involuntary compulsion, or by reason of some act done for the purpose of compelling the plaintiffs and others involuntarily not to deal together in the course of interstate trade."

4. That the court erred in sustaining the refusal of the district

court to charge the jury as requested in the fourth paragraph of the defendants' requests to charge, as follows:

"4. In determining whether there was or was not such a combination or conspiracy for the first purpose of compelling the plaintiffs and others involuntarily not to deal together in the ordinary course of interstate trade, you should take into consideration all the evidence as to the professed intent of those persons who took an active part in the transaction, and you should also take into consideration all their acts and omissions to act, in using, or not using the machinery which they had at hand, for the purpose of preventing the plaintiffs, and their customers, from engaging in, and carrying on, trade between them."

5. That the court erred in sustaining the refusal of the district court to charge the jury as requested in the fifth paragraph of the defendants' requests to charge, as follows:

"5. If you find that the strike at the plaintiffs' factory was for the immediate purpose and object of compelling the plaintiffs to unionize their factory, and that the persons who took part in it did not then have any intention of preventing the plaintiffs and their customers from dealing together, except as the strike itself might temporarily interfere with the plaintiffs' production of hats; and if you find that no steps were thereafter taken to prevent the plaintiffs from employing other workmen, or from manufacturing and shipping hats; then the plaintiffs will not in this action be entitled to recover damages resulting from the strike, and from the plaintiffs' subsequent inability due to the comparative inefficiency of their new workmen to manufacture hats as good or as cheaply as before."

7. That the court erred in sustaining the refusal of the district court to charge the jury as requested in the seventh paragraph of the defendants' requests to charge, as follows:

"7. Some degree of compulsion or intimidation brought to bear upon the plaintiffs' customers or against persons handling the plaintiffs' hats, in order to compel them involuntarily to cease or limit their dealings with the plaintiffs, or in the plaintiffs' hats, must be shown before the plaintiffs can recover damages for the loss or diminution of business with such customers or retailers."

8. That the court erred in sustaining the refusal of the district court to charge the jury as requested in the eighth paragraph of the defendants' requests to charge, as follows:

"8. In so far as any of the plaintiffs' customers or any retail dealers handling the plaintiffs' hats, were not influenced to cease dealing with the plaintiffs, or handling the plaintiffs' hats, except because of the fear of losing the patronage of organized labor; their trade with the plaintiffs, or in the plaintiffs' hats, was not restrained for the purpose of this case, and the plaintiffs cannot recover in this action for damages resulting from loss or diminution of the trade of such customers."

9. That the court erred in sustaining the refusal of the district court to charge the jury as requested in the ninth paragraph of the defendants' requests to charge, as follows:

"9. The union label of the United Hatters is, in the states where it is registered according to law, a statutory trademark, and the officers and agents of the United Hatters have the same right to solicit trade for hats bearing their label as any merchant has to solicit trade for goods bearing his trade mark."

10. That the court erred in sustaining the refusal of the district court to charge the jury as requested in the tenth paragraph of the defendants' requests to charge as follows:

"10. In so far as any of the plaintiffs' customers, or any retail dealers handling the plaintiffs' hats, were not influenced to cease dealing with the plaintiffs, or handling the plaintiffs' hats, except because of an increased demand for hats bearing the union label of the United Hatters; their trade with the plaintiffs, or in the plaintiffs' hats, was not restrained, for the purposes of this case, and the plaintiffs cannot recover in this action for damages resulting from the loss or diminution of business solely due to an increased demand for union label hats."

11. That the court erred in sustaining the refusal of the district court to charge the jury as requested in the eleventh paragraph of the defendants' requests to charge, as follows:

"11. This action is not broadly for interference with the good-will of the plaintiffs' business, but for involuntarily preventing the plaintiffs and their customers in other states from dealing together in the ordinary course of interstate trade, in pursuance of a combination or conspiracy directly to prevent them from so trading together, and the plaintiffs are not entitled to recover in this action in damages for loss of trade with customers in other states, except in so far as the plaintiffs may show that their customers were compelled involuntarily to cease or limit their dealings with the plaintiffs, or in the plaintiffs' hats."

12. That the court erred in sustaining the refusal of the district court to charge the jury as requested in the twelfth paragraph of the defendants' requests to charge, as follows:

"12. The plaintiffs are not entitled in this action to recover in damages suffered after the commencement of this action, to-wit: September 23rd, 1903."

14. That the court erred in sustaining the refusal of the district court to charge the jury as requested in the fourteenth paragraph of the defendants' requests to charge, as follows:

"14. The plaintiffs are not entitled to recover in this action in damages for loss of trade with any given customer, unless they can show by a fair preponderance of evidence that the loss of trade with such customer was caused by the acts of some of the defendants, or their authorized agents, done in pursuance of a combination or conspiracy to compel such customers involuntarily not to deal with them in the ordinary course of interstate commerce."

15. That the court erred in sustaining the refusal of the district court to charge the jury as requested in the fifteenth paragraph of the defendants' requests to charge, as follows:

"15. If you find that the direct and immediate intent of the officers and agents of the United Hatters of North America was to

unionize the plaintiffs' factory, and that they did not otherwise pr vent, or intend to prevent, the plaintiffs and their customers in oth states, from dealing together, than by a strike for the purpose compelling the plaintiffs to unionize their factory, and by influen ing the plaintiffs' customers in other states voluntarily to dive their trade to other manufacturers until such time as the plaintif should unionize their factory then your verdict should be for th defendants."

16. That the court erred in sustaining the refusal of the distric court to charge the jury as requested in the sixteenth paragraph o the defendants' requests to charge, as follows:

"16. If you find that there was such a combination or conspirac as the court may charge you is sufficient basis for this action, ther the question of the personal responsibility in damages of any de fendant in this action will depend upon whether he consciously and intentionally participated in, or authorized such combination."

17. That the court erred in sustaining the refusal of the district court to charge the jury as requested in the seventeenth paragraph of the defendants' requests to charge, as follows:

"17. Proof of mere suspicion or bare knowledge that the officers and agents of the United Hatters had, in times past, followed the customers and goods of other manufacturers into other states for the purpose of preventing their sale, as not of itself sufficient to charge any defendant with having authorized the officers and agents of the United Hatters to repeat such conduct as against these plaintiffs. It must be shown either that he approved of such conduct, or that he intended it to be continued. The acceptance of office in the union, with knowledge of such conduct, tends to show such approval; but the mere retention of membership in the union, with such knowledge, and the continued payment of dues, without any other evidence, does not."

18. That the court erred in sustaining the refusal of the district court to charge the jury as requested in the eighteenth paragraph of the defendants' requests to charge as follows:

"18. If you find as to any defendant or defendants that they had never held office in any local or national union and were never delegates to any convention; that they had no information of any trouble in the Loewe factory until after the men were out; that they were not regular readers of the Journal of the United Hatters and do not remember reading the printed reports of the conventions of the United Hatters; that according to their best recollection they did not know prior to the commencement of this action that the officers or agents of the United Hatters had followed, or were charged with following, the customers or goods of any hat manufacturer in other states for the purpose of restricting or preventing the sale of such manufacturers' hats; that to the best of their recollection they never read in the Hatters' Journal or elsewhere any statements to that effect; that they were not regular attendants at the meetings of their respective local unions, and to the best of their recollections, were not present at any meeting where the proceedings of conventions were reported on, or the Berg or Roeloff troubles reported on

or discussed; that to the best of their recollection they never heard of the suit brought by Roeloff against the United Hatters; that they knew there were agents of the United Hatters on the road, but supposed that they were employed to advertise the union label and promote the sale of union-made hats; that those of them who lived in Danbury received the notice, Exhibit 86; that after this suit was brought they received the letter from Mr. Connolly relative to employment of counsel and signed and returned the form annexed thereto (said letter and form being the same as has been read in testimony from Danbury News of September 14th, 1903), that from 1900 to 1903 they read with more or less regularity some local newspaper in their respective towns, but not completely or invariably, and to the best of their recollection, they do not remember reading anything therein or elsewhere about the methods employed to constrain manufacturers to unionize their shops; that those of them who testified at the former trial were paid by the United Hatters for their time and expense in attending as witnesses; and that after this suit was brought they continued to pay dues and made no protest, and did nothing to prevent, the re-election of the same officers as before, then your verdict should be in favor of such defendant or defendants."

19. That the court erred in holding that the district court properly charged the jury as follows, to-wit:

"Now if this evidence falls short of satisfying you that certain of these defendants did know of this unlawful conspiracy, or were in duty bound to know of it, or did tacitly approve of it, then such defendant- should be acquitted, if any there be; or, in other words, assuming that there was a conspiracy to violate the Federal statute, as I have explained to you, and that the statute was, in fact, violated to the damage of the plaintiffs, then every person who had a part in planning or a hand in executing, or aided, or abetted therein, is jointly liable. Membership in a labor union and the payment of dues, are not acts of themselves that necessarily constitute counselling, advising, aiding or abetting. Membership and payment of dues are the life of the voluntary association, and are the foundation of all its authority and the course of financial assistance in executing that authority.

If these members paid their dues and continued to delegate authority to their officers and agents to commit unlawful deeds, which, in this case is the interference with the plaintiffs' interstate trade and commerce, under such circumstances as lead you to believe that they knew or ought to have known, and that such officers and agents were in that matter warranted in the belief that they were acting within their delegated authority, then such members are jointly liable, and no others."

20. That the court erred in holding that the district court properly charged the jury as follows, to-wit:

"If it was a part of the original scheme to unlawfully interfere with the plaintiffs' interstate commerce and trade as I have described, then the plaintiffs are entitled to recover all such damage as they suffered in the different steps taken leading up to the effecting

of that object, excluding, however, the steps taken in the State of Connecticut relative to the work here, (except so far as that interfered with interstate commerce and trade) in the carrying out of the original plan and scheme to force the plaintiffs' factory to become unionized by abridging and destroying his interstate commerce, or, in other words, if you find the plot was to boycott the plaintiffs' trade with parties in sister states, if necessary to unionize their factory, and such boycotting was in fact resorted to, then the plaintiff is entitled to recover all such damages as were suffered in the execution of that plan to interfere with and destroy his interstate commerce and trade. As it had in it an unlawful design that was carried into effect, he is entitled to recover such damages as directly and proximately flow from the acts committed prior to the bringing of the suit."

21. That the court erred in holding that the district court properly charged the jury as follows, to-wit:

"The only acts of the defendants for which the plaintiffs can recover damages in this case are such acts as are set forth in the complaint and as were done by the defendants or their agents before the suit was commenced; and the plaintiffs are entitled to recover all damages which are the proximate and natural result of such acts, including such damage as may have continued or resulted therefrom after the suit was commenced by the plaintiffs, but cannot recover in this suit for any damages which are the result of the continuation of the alleged conspiracy after the suit was commenced, or which are the result of the performance of any acts in furtherance of said conspiracy after the suit was commenced; and it is for you to determine from all the evidence in the case what part, if any, of the plaintiffs' damage which resulted after the suit was started was the direct and proximate result of the alleged wrongful acts of the defendants before the commencement of the suit, and allow therefor."

22. That the court erred in sustaining the refusal of the district court to set aside the verdict as against the evidence and the action of the district court in overruling the defendants' motion to set aside such verdict as against the evidence.

23. That the court erred in sustaining the action of the district court in overruling the defendants' motion to set aside the verdict as excessive.

24. That the court erred in sustaining and upholding the ruling of the district court admitting to be read against the objection and exception of the defendants, an extract from the Danbury Evening News for the 18th day of May, 1903, entitled "Annual Address of President Moffit." "The Head of the United Hatters Reviews his Work and Makes Recommendations," as appears on page 1105 and elsewhere of the printed record.

25. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence against the objection and exception of the defendants, an extract from the Danbury Evening News of June 18th, 1900, entitled "Advertising the Hat Label," as appears on page 114, and elsewhere of the record.

26. That the Court erred in sustaining and upholding the ruling

of the district court admitting to be read in evidence against the objection and exception of the defendants, an extract entitled "United Hatters sued? H. H. Roeloff of Philadelphia wants $250,000 damages," as appears on page 1124 and elsewhere of the record.

27. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence against the objection and exception of the defendants, an extract from the Danbury News for Friday, July 25th, 1902 entitled: "After Loewe Factory. The Hatters' Union will attempt to Unionize this Plant," as appears on page 1127, and elsewhere of the record.

28. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence against the objection and exception of the defendants, an extract from the Norwalk Hour for August 18th, 1900, entitled: "Wore non-union hats. An oversight made it necessary for two hatters to pay fines," as appears on page 1140 and elsewhere of the record.

29. That the court erred in sustaining the ruling of the district court admitting to be read in evidence against the objections and exception of the defendants an extract from the South Norwalk Evening Sentinel for August 10, 1900 entitled: "Orange Hatters may Parade"; sub-title; "The Newark Evening News of Wednesday evening said"; as appears on page 1132 and elsewhere of the printed record.

30. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence against the objection and exception of the defendants, an extract from the South Norwalk Evening Sentinel for August 15th, 1900, entitled: "Hatters on Strike. To make Connett Factory of Orange Fair instead of Open. Union men at Berg Shop," as appears on page 1134 and elsewhere, of record.

31. That the court erred in sustaining and upholding the ruling of the district court admitting the testimony on cross examination of one Nathan C. Hoy, against the objection and exception of the defendants, to the effect that said Hoy, one of the defendants, continued to pay local and national dues, so-called, after the service of the writ in this cause, and made no investigation of the truth of the matters set forth in the complaint and took no steps to prevent the re-election of the same officers as before.

32. That the court erred in sustaining and upholding the ruling of the district court admitting against the objection and exception of the defendants, the testimony on cross-examination of the witness Bresson to the effect that after the service of the writ and complaint he continued to pay dues and made no effort to prevent the re-election of the same officers.

33. That the court erred in sustaining and upholding the ruling of the district court admitting against the objection and exception of the defendants, the testimony on cross examination of 160 defendants more or less, to the effect that they continued to pay dues after the service of the writ and complaint in this cause; that they made no investigation as to the truth of the matters alleged in the

complaint and that they made no attempt to prevent the re-electio of the same officers as before.

34. That the court erred in sustaining the ruling of the distric court admitting to be read in evidence against the objection and ex ception of the defendants, an extract from the American Federa tionist for September, 1902 entitled: "National and Internationa Unions Affiliated with the American Federation of Labor; head quarters at Washington, D. C. Samuel Gompers, President, Fran Morrison, Secretary," as appears on pages 224 to 230, inclusive o the record.

35. That the court erred in sustaining and upholding the rulin of the district court admitting against the objection and exceptio of the defendants, a compiled list of declarations of unfairness o various concerns as found in the American Federationist from De cember 1898, to August 1903, as appears on pages 237 to 254 of th record.

36. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence against the ob jection and exception of the defendants, an editorial from the Amer ican Federationist of October 1899, entitled, "The Boycott as a Legitimate Weapon," as appears on page 268 and elsewhere of the record.

37. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence against the objection and exception of the defendants, from the October 1903 number of the American Federationist an editorial by Samuel Gompers, entitled: "A Damage Suit or Prosecution to Scare or In timidate us—Well" as appears on page 963 and elsewhere of the printed record.

38. That the court erred in sustaining and upholding the ruling of the district court admitting against the objection and exception of the defendants, the resolution adopted by the convention of the American Federation of Labor for the year 1908, entitled: "Reso lution No. 99 by delegate Louis E. Kemper, of the United Brewery Workers of America," as appears on page 186 and elsewhere, of the printed record.

39. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence as against the defendants not shown to have been present or to have known of or ratified the same, the following resolution presented to the con vention of the American Federation of Labor held in 1901·

"Whereas, The United Hatters of North America are at the pres ent time engaged in a strike of large proportions at the factory of Henry H. Roelof & Co. of Philadelphia, for the recognition of their union and for union conditions, and

"Whereas, It is of vital importance not only to the Hatters' or ganization, but also to organized labor in general, that the United Hatters of North America should be victorious in the fight they are making for the existence of their union, and

"Whereas, The United Hatters of North America have never re-

fused to give assistance, financially or otherwise, to their brethren who have asked for it; therefore, be it

"Resolved, That this convention endorses and approves of the course pursued by the United Hatters of North America in their present fight against the wealthy concern that has declared it will never recognize any labor union.

"Resolved, That we call upon all international, national and local unions affiliated with the American Federation of Labor to give all the assistance possible to the United Hatters of North America in the unequal fight which they are at present so manfully making against wrong and oppression, and we hereby pledge ourselves not to patronize any dealer or dealers who handle the product of non-union hatters and more particularly the product of the firm of Henry H. Roelof & Co. of Philadelphia, Pa."

40. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence as against the defendants not shown to have been present or to have known of or ratified the same, the following resolution adopted at the convention of the American Federation of Labor, held in 1899:

"Whereas, The United Hatters of North America are at the present time engaged in a strike of large proportions at the factory of F. Berg & Co. Orange, N. J. for the recognition of their union, and for union conditions, and

"Whereas, This strike has now lasted about two months, and it is of vital importance, not only to the Hatters' organization, but also to organized labor in general, that the United Hatters of North America should be victorious in the fight which they are making for the existence of their union.

"Whereas, The United Hatters of North America have never refused to give assistance, financial and otherwise, to their brethren who have asked for it; therefore, be it

"Resolved, That this convention hereby endorses and approves of the course pursued by the United Hatters of North America in their present fight against the wealthy concern that has declared that it will never recognize any labor union.

"Resolved, That we call upon all the international, national and local unions affiliated with the American Federation of Labor to give assistance to the United Hatters of North America in the unequal fight which they are at present so manfully making against wrong and oppression by refusing to patronize any dealer or dealers who handle the product of any non-union hatters, and more particularly, the product of the firm of F. Berg & Co. of Orange N. J. Adopted."

41. That the court erred in sustaining and upholding the ruling of the district court admitting in evidence as against all of the defendants, whether present at said convention or not, the several printed reports of the proceedings of the convention of the American Federation of Labor from and after the convention of 1903; to the admission of which in evidence and to the reading of extracts therefrom the defendants duly objected and to the ruling of the district court in admitting the same the defendants duly excepted.

42. That the court erred in sustaining and upholding the rulin of the district court admitting in evidence the several volumes, issue and numbers of the magazine called The American Federationist to be read in evidence as against all of the defendants irrespective a to whether they had knowledge of the contents thereof, and to th reading of extracts therefrom the defendants duly objected and ex cepted to the ruling of the court admitting the same.

43. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence the petition fo leave to intervene in the argument in this cause before the Supreme Court of the United States in 1907, filed by the American Federation of Labor, the same being marked Exhibit 62, to the admission of which the defendants duly objected and excepted to the ruling of the court admitting the same; as appears on page 186 and elsewhere, of the printed record.

44. The court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence against the objection and exception of the defendants, certain extracts from the report of the convention of the American Federation of Labor for the year 1885, entitled: "Resolution by Mr. Kirchner," as appears on pages 1112 and elsewhere of the printed record.

45. That the court erred in sustaining and upholding the ruling of the district court admitting in evidence as against all of the defendants whether present at said convention or not, the several printed reports of the proceedings of the conventions of the American Federation of Labor prior to 1896.

46. That the court erred in sustaining and upholding the ruling of the district court admitting in evidence as against all of the defendants, whether present at said conventions or not, the several printed reports of the proceedings of the conventions of the American Federation prior to 1902; to the admission of which in evidence and to the reading of extracts therefrom the defendants duly objected and excepted to the ruling of the court admitting the same.

47. That the court erred in sustaining and upholding the ruling of the district court admitting as against all of the defendants, whether present at said conventions or not, the several printed reports of the proceedings of the conventions of The American Federation of Labor, to the admission of which in evidence and to the reading of extracts therefrom the defendants duly objected and excepted to the ruling of the court admitting the same.

48. That the court erred in sustaining and upholding the ruling of the district court admitting in evidence as against all of the defendants, whether present at said conventions or not, and irrespective of whether they had knowledge of the contents thereof, the several printed reports of the conventions of the United Hatters of North America for the years 1896, 1900, 1903 and 1907 respectively; to the admission of which in evidence and to the reading of extracts therefrom the defendants duly objected and excepted to the ruling of the court admitting the same.

49. That the court erred in sustaining and upholding the ruling of the district court admitting in evidence as against all of the de-

fendants, irrespective of whether they had knowledge of the contents thereof, the several issues of the magazine called "The Journal of the United Hatters of North America;" to the admission of which in evidence and to the reading of extracts therefrom the defendants duly objected and excepted to the ruling of the court admitting the same.

50. That the court erred in sustaining and upholding the action of the district court overruling the motion of the defendants to suppress the deposition of one Patrick Lynch and erred in sustaintng and upholding the action of the district court in admitting to be read in evidence against the objection and exception of the defendants those portions of said depositions in which said Lynch declines to answer certain questions, on the ground that his answer might tend to incriminate him.

51. That the court erred in sustaining and upholding the action of the district court overruling the defendants' motion to suppress the deposition of John J. Ford, and in admitting to be read in evidence against the objection and exception of the defendants those portions of said deposition in which the said Ford declined to answer certain questions on the ground that his answer might incriminate him.

52. That the court erred in sustaining and upholding the action of the district court overruling the defendants' motion to suppress the deposition of one Eugene F. Riley, and erred in sustaining and upholding the action of the district court admitting to be read in evidence against the objection and exception of the defendants, those portions of said deposition in which said Riley declined to answer certain questions on the ground that his answers might incriminate him.

53. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence against the objection and exception of the defendants, a letter from one Thomas D. Stokes to D. E. Loewe, dated Richmond, Va. December 2, 1902, as appears on page 516 and elsewhere of the printed record.

54. That the court erred in sustaining and upholding the ruling of the district court permitting to be read in evidence against the defendants' objection and exception, the following questions and answers from the deposition of said Stokes: "Did you not associate the publication of that matter concerning your concern with certain developments or events in connection with the whole thing? A. About that time, or probably a little afterwards, I was told by our city salesman that he found it practically impossible to sell our goods on this market. Q. Can you state why? A. Because if the retailers bought goods from us they thought they would be injured in their business by the loss of patronage from labor unions."

55. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence against the objection and exception of the defendants, a letter from Thomas D. Stokes to D. E. Loewe, dated Richmond, Va. Jan. 20, 1903, as appears on page 525 and elsewhere of the printed record.

56. That the court erred in sustaining and upholding the ruling

of the district court admitting to be read in evidence against the objection and exception of the defendants, a letter from Longley, Lowe & Alexander to D. E. Loewe, dated February 24, 1903, as appears on page 552 and elsewhere of the printed record.

57. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence against the objection and exception of the defendants, a letter written by the plaintiff D. E. Loewe to James P. Maher in November 1900 as appears on page 981 and elsewhere of the printed record.

58. That the court erred in sustaining and upholding the ruling of the district court admitting against the objection and exception of the defendants, the plaintiff Loewe to testify as to what he said to his employés on or about the 26th day of July, 1902, for the purpose of inducing them to remain in his employment, as appears on pages 1013, 1014, and elsewhere of the printed record.

59. That the court erred in sustaining and upholding the ruling of the district court admitting the plaintiff Loewe to testify against the objection and exception of the defendants, that one James Gildea, told the plaintiff that Mr. Maher had stated at a certain meeting attended by said Gildea, that: "We have got them, because our agents are ready, and we will send them on the road, and they will ruin his (meaning the plaintiff's) business. If he should furnish his factory with non-union men to the roof, it won't do him any good, our agents are ready, and we will ruin him."

60. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence against the objection and exception of the defendants, a letter written by the plaintiff, Loewe, to James P. Maher, about April 22, 1901, as appears on page 996 and elsewhere, of the printed record.

61. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence against the objection and exception of the defendants a so-called "warning": "To the Members of all Labor Unions", as appears on page 720 and elsewhere, of the printed record.

62. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence against the objection and exception of the defendants, an alleged copy of an injunction said to have been issued by a Massachusetts Court, as appears on page 721 and elsewhere, of the printed record.

63. That the court erred in sustaining and upholding the ruling of the district court admitting against the objection and exception of the defendants, the evidence of the plaintiff, Loewe, as to the amount of business done with the plaintiffs' customers for the calendar year of 1900, the calendar year of 1901, the calendar year of 1902 and the calendar year of 1903.

64. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence a list of the plaintiffs' customers and of the amounts of business done with each of said customers for the year 1904, as appears on pages 1054 to 1059 inclusive, of the printed record.

65. That the court erred in sustaining and upholding the ruling

of the district court admitting to be read in evidence against the objection and exception of the defendants the statement of profit and loss of the plaintiffs' business for the year ending December 31, 1904, as appears on pages 1073 and 1074 of the printed record.

66. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence against the objection and exception of the defendants, from the deposition of one Savanah, a salesman employed by Triest & Co. of San Francisco, California, that one Smith, a customer of said Triest & Co. refused to buy hats, and stated as a reason for not buying: "That he was intimidated by the labor representatives, on account of a boycott. He even went so far as to state that he would gladly buy, if he were allowed to."

67. That the court erred in sustaining and upholding the ruling of the district court admitting to be read from said deposition of Michael Savanah, against the objection and exception of the defendants, the statement that "one Jonas said to him that he was afraid to buy on account of the boycott, and also stated that he had one of his employés there, who is a prominent member of the Oakland Labor Council" who he was afraid to antagonize".

68. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence against the objection and exception of the defendants, from the deposition of one Ben Rosenthal, a salesman employed by Triest & Co. of San Francisco, the statement that one H. G. Wessels, a customer of said Triest & Co. told him (Rosenthal): "We don't want to deal while there is a boycott on. They want union goods, and this man come around and told us to handle union goods." "Did they state why the visit of Mr. Hennelly should prevent their patronizing your house? A. Well, he said they were afraid of being boycotted, and they were getting circulars."

69. That the court erred in sustaining and upholding the ruling of the district court admitting to be read against the objection and exception of the defendants, from the deposition of Frank Triest, the statement that one Karl Steinhart, a customer of said Triest, refused to buy hats, giving as a reason, the receipt of notices, from the unions; and in that connection, the following question and answer; "Did any conversation arise at this time as to why the receipt of these circulars should induce the I. X. L. to cease dealing with Triest & Co.? A. They were afraid of a boycott themselves."

70. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence from the deposition of said Triest against the objection and exception of the defendants, evidence to the effect that S. Dannebaum & Co. refused to buy hats, and stated that said refusal was; "On account of receiving notice that Triest & Co. were boycotted; at the same time the Union men of Vallejo calling on them and notifying them that they should not purchase hats from Triest & Co. under a threat of being boycotted themselves."

71. That the court erred in sustaining and upholding the ruling

of the district court admitting against the objection and exception of the defendants, the testimony of one Middlekauff, a customer of the plaintiffs, as to the reason of his (Middlekauff's) customers gave to him for refusing to buy the Loewe goods as follows: "When I would go to sell them, they would tell me that they were afraid to buy the goods because of fear of being blacklisted by the local unions. They had been visited by some of them at times."

(Endorsed:) United States Circuit Court of Appeals, Second Circuit. At Law. No. 32. Martin Lawlor et al., Plaintiffs in Error, v. D. E. Loewe et al., Defendants in Error. Assignments of Error and Prayer for Reversal. Alton B. Parker, 111 Broadway, New York City; Frank L. Mulholland, Nichols Building, Toledo, Ohio, Attorneys for Plaintiffs in Error. United States Circuit Court of Appeals, Second Circuit. Filed Jan. 12, 1914. William Parkin, Clerk.

United States Circuit Court of Appeals, Second Circuit.

MARTIN LAWLOR et al., Plaintiffs in Error (Defendants Below),

v.

D. E. LOEWE et al., Defendants in Error (Plaintiffs Below).

Bond on Writ of Error.

Know all men by these presents, that we, Martin Lawlor, one of the defendants and one of the plaintiffs in error in the above-entitled cause, as principal, and the American Surety Company of New York, a corporation organized and existing under the laws of the State of New York, as surety, are held and firmly bound unto D. E. Loewe and Martin Fuchs, plaintiffs and defendants in error in the said cause, in the sum of One thousand dollars, to be paid to the said D. E. Loewe and Martin Fuchs, their executors or administrators, to which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our successors, representatives and assigns, firmly by these presents.

Sealed with our seals and dated the — day of January, 1914.

Whereas, the said Martin Lawlor and the other defendants and plaintiffs in error in the said cause have sued out a writ of error to the Supreme Court of the United States to reverse the judgment in the said cause by the United States Circuit Court of Appeals for the Second Circuit.

Now, therefore, the condition of this obligation is such that if the defendants in said cause shall prosecute said writ to effect and answer all costs, if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

MARTIN LAWLOR.

AMERICAN SURETY COMPANY OF NEW YORK.

[SEAL.] By MARSHALL L. BROWER,

Resident Vice-President.

Attest: GEORGE R. CROSBY,

Resident Assistant Secretary.

58678.

Approved January 30, 1914.

ALFRED C. COXE,
Judge of the United States Circuit Court of Appeals for the Second Circuit.

STATE OF NEW YORK,
County of New York, ss:

On the 16th day of January, 1914, before me personally appeared Martin Lawlor to me known and known to me to be the person described in and who executed the foregoing instrument, and he thereupon acknowledged to me that he executed the same.

[SEAL.] L. F. LAUGHLIN,
Commissioner of Deeds, No. 6, City of New York, Residing in Manhattan.

Certificate filed in N. Y. County.

STATE OF NEW YORK,
County of New York, ss:

On this 29th day of January, 1914, before me personally appeared Marshall L. Brower Resident Vice President of the American Surety Company of New York to me known who, being by me duly sworn did depose and say that he resides in The City of New York, N. Y. that he is the Resident Vice President of the American Surety Company of New York, the Corporation described in and which executed the above instrument; that he knows the corporate seal of said Corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Trustees of said Corporation and that he signed his name thereto by like order; and that the liabilities of said Corporation do not exceed its assets as ascertained in the manner provided by law. And the said Resident Vice President further said that he is acquainted with George R. Crosby and knows him to be one of the Resident Assistant Secretaries of said Corporation; that the signature of said Resident Assistant Secretary subscribed to the said instrument is in the genuine handwriting of the said Resident Assistant Secretary and was thereto subscribed by the like order of the said Board of Trustees, and in the presence of him the said Resident Vice President.

[SEAL.] E. A. FARRELL,
Notary Public, N. Y. Co.

No. 1058 Register's office New York County, No. 5015 Certificate filed in all Counties.

Extract from the Record Book of the Board of Trustees of the American Surety Company of New York.

The first meeting of the Board of Trustees of the American Surety Company of New York, after the annual Stockholders' meeting, was held at the office of the Company No. 100 Broadway, New York City on Tuseday, January 20, 1914 at eleven o'clock A. M.

"The Secretary read the report of the Nominating Committee as follows:

"To the Board of Trustees of the American Surety Company of New York.

"GENTLEMEN: The Committee appointed by the Executive Committee of this Company at their meeting held Tuesday December 9, 1913, for the purpose of nominating * * * officers of the Company, * * * for the ensuing year and until their successors are elected, beg leave to report as follows:

"We nominate for * * *

Place.	Resident Vice Presidents.	Resident Ass't Sec'ys.
New York, N. Y.	Marshall L. Brower.	Marshall L. Brower.
	A. E. Cotterell.	Wm. H. Bishop.
	William M. Tomlins, Jr.	A. E. Cotterell.
	Lester S. Moore.	Chas. S. Waterbury.
	Joseph A. Sinn.	Daniel Stewart.
	Wm. H. Bishop.	E. D. Sadler.
		George R. Crosby.
		W. H. E. Reinecke.
		Joseph A. Sinn.
		E. J. Sabater.
		Louis Papen.

"Whereupon, it was Resolved, that the Secretary be authorized to cast one ballot on behalf of the Trustees present, for the Members of the Executive Committee, Finance Committee, Committee on Accounts, Committee on Capital Box, Officers and Counsel, as recommended by the Nominating Committee for the ensuing year and until their successors are elected; which was done, and thereupon the aforementioned persons were declared to have been unanimously elected to their respective offices for the ensuing year and until their successors are elected.

* * * * * * *

"The following resolution was adopted:

"Resolved, that the Resident Vice Presidents be and they hereby are, and each of them is hereby, authorized and empowered to execute and to deliver and to attach the seal of the company to any and all obligations for or on behalf of the company, such obligations, however to be attested in every instance by the Resident Assistant Secretary."

STATE OF NEW YORK,
County of New York, ss:

I, W. H. Riley, Assistant Secretary of the American Surety Company of New York, do hereby certify that I have compared the foregoing extracts and transcripts from the Record Book of the Board of Trustees of the American Surety Company of New York, with

the original record of said Board and that the same are correct extracts and transcripts therefrom as they appear of record and are set forth and contained in said Record Book; and I further certify that I have compared the foregoing resolutions with the originals thereof, as recorded in the Minute Book of said Comapny and do certify that the same is a correct and true transcript therefrom, and of the whole of said original resolutions; and that the said resolutions have not been revoked or rescinded.

Given under my hand and the seal of the Company at the City of New York, this 26th day of Jan. 1914.

[SEAL.] W. H. RILEY, *Ass't Sec'y.*

(Endorsed:) United States Circuit Court of Appeals, Second Circuit. Martin Lawlor, et al., Plaintiffs in Error (Defendants below), vs. D. E. Loewe, et al., Defendants in Error (Plaintiffs below). Bond on Writ of Error. United States Circuit Court of Appeals, Second Circuit. Filed Jan. 30, 1914. William Parkin, Clerk.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 432, Vol. I and 1 to 1972, Vols. 2 to 5 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Martin Lawlor et al., Plaintiffs in Error, against D. E. Loewe et al., Defendants in Error, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 3d day of February in the year of our Lord One Thousand Nine Hundred and fourteen and of the Independence of the said United States the One Hundred and thirty-eighth.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, *Clerk.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court of Appeals before you, or some of you, between Dietrich E. Loewe and Martin Fuchs, partners in business under the firm name of D. E. Loewe & Co., both of the Town of Danbury, Fairfield County, Connecticut, defendants in error, and William P. Bailey, Charles Bailey, Frederick Benedict, John Cords, Virgil Dibble, T. Archibald Evans, Charles Frost, Howard S. Gilbert, George H. Gilbert Charles Greene,

John Halpin, Reuben Johnson, Henry C. Judd, John L. Kane, Martin Lawlor, Charles Lathrop George W. Morehouse, Byron Morgan, Barney Murphy, Owen Murray, William Ochs, William Ohler, Levi Short, Orrin Smith, William Stone, Myron Trowbridge, Patrick Troy, of Bethel, Connecticut; Theophilus Abieniste, Andrew Aitken, Nicholas W. Allen, Thomas H. Allen, Daniel H. Barnes, Nicholas W. Barzin, Clemens Beschele, Frederick S. Blackburn, John Blake, Simon Blake, Herman H. Bohman, Nelson H. Booth, James N. Boughey, Thomas Boyd, John Bradshaw, Peter J. Brennan, Alphonse Bresson, Theodore Bright, Byron S. Brooks, Andrew G. Brown, Chauncey H. Butler, James P. Callahan, John J. Callahan, Achille Canale, Thomas J. Cassidy, William Clancy, Elmer R. Clark, John H. Collins, Lewy W. Comes, Patrick Connolly, Michael Corbett, James D. Costello, John H. Craft, Byron W Crane, James Crotty, John Crotty, Peter T. Currie, William Deakin, George F. Denton, James Dillon, William S. Dutcher, John Dyer, John Ellegett, Patrick Ellegett Carl Erdman, Timothy H. Farrell, Patrick J. Feeley, Patrick J. Fisher, Emil Floyske, Thomas Foley, Peter Gallagher, Christian Gottlieb Garni, William E. Gartner, Martin Gorman, Michael C. Griffin, Wright Hampson, David J. Hardy, Alexander Harkness, John Harkness, Patrick Hart, John Hassett, Stephen Havran, Michael Hennessey, George M. Herrick, Charles A. Hodge, Adolph Holdeichel, Nathan C. Hoy, William Humphries, Patrick F. Hunt, Charles W. Hurd, Michael Hurd, Patrick E. Jaffrey, Daniel Kearns, Martin Keating, Thomas Keenan, Daniel P. Kelly, Michael F. Kenney, John Keogh, Charles J. King, Frank Kornhass, Frank E. Krebs, Martin Lauf, Edward D. Lees, John Leonard, Thomas Leonard, Michael F. Lynch, John Morris, Jeremiah McCarthy, Patrick J. McCarthy, Patrick T. McCarthy, Martin McCue, Thomas E. McGauley, Martin McGettrick, James F. McGlone, John McGlone, Peter McGlone, Patrick McGrath, Charles F. McHan, Thomas McHugh, Daniel McInerey, Frank Meath, Henry Messer, Henry C. Michael, George J. Miller, Gustav Mougin, Eugene L. Mulkin, Daniel Murphy, Timothy Murray, John B. Nowlan, William V. Nowlan, George T. Oakley, Peter O'Boy, Louis E. Orton, Daniel J. Osborne, Alvah S. Pearce, George H. Phillips, Peter Picken, Arthur I. Pickett, John Pribula, Jacob Prinz, Christian Rheinhold, Frank Rode, Frank E. Seaman, Hugh C. Shalvoy, Charles Shaffer, Frederic L. Stahl, George Stuckey, Michael E. Sullivan, William S. Sullivan, Joseph Tosi, Thomas E. Waters, Samuel S. Wilson, Frank K. Wildman, all of Danbury, Connecticut; Fanton W. Beers, Albert Berg, William A. Brennan, Stephen Carlin, Edward Cunningham, George A. Davis, Charles Flynn, Adison Hathaway, Peter F. Kearney, Patrick Keating, James Kinnane, Thomas Layhe, Charles Moore, S. Wallace Osborn, John E. Paul, Robert Pearson, John Redway, Owen Reilley, Daniel Riodan, John E. Rooney, Thomas F. Saunders, John W. Scullev, Max Singerwold, Charles Smith, Frederick Taylor, Peter Ward, William J. Weisheit, James Whitney, all of Norwalk, Connecticut, plaintiffs in error, a manifest error hath happened, to the great damage of the said plaintiffs in error, as by complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Edward Douglass White, Chief Justice of the United States, the 12th day of January, in the year of our Lord one thousand nine hundred and fourteen.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals, Second Circuit.

Allowed by—
ALFRED C. COXE,
Judge of the United States Circuit Court of Appeals, Second Circuit.

Service of a copy of the foregoing writ admitted this 12th day of Jan. 1914.

WALTER GORDON MERRITT,
Of Counsel for Defendants in Error.

[Endorsed:] 4725. Supreme Court of the United States. Martin Lawlor, et al., Plaintiffs in Error, v. D. E. Loewe, et al., Defendants in Error. Writ of Error. Alton B. Parker, 111 Broadway, New York City; Frank L. Mulholland, Nichols Building, Toledo, O., Attorneys for Plaintiffs in Error. United States Circuit Court of Appeals, Second Circuit. Filed Jan. 17, 1914. William Parkin, Clerk.

Citation.

The United States Circuit Court of Appeals, Second Circuit.

UNITED STATES OF AMERICA, *ss:*

To Dietrich E. Loewe and Martin Fuchs, partners in business under the firm name of Loewe & Co. and both of the town of Danbury, Fairfield County, Connecticut, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerks's office of the United States Circuit Court of Appeals

for the Second Circuit, wherein you are defendants in error and William P. Bailey, Charles Bailey, Frederick Benedict, John Cords, Virgil Dibble, T. Archibald Evans, Charles Frost, Howard S. Gilbert, George H. Gilbert, Charles Greene, John Halpin, Reuben Johnson, Henry C. Judd, John L. Kane, Martin Lawlor, Charles Lathrop, George W. Morehouse, Byron Morgan, Barney Murphy, Owen Murray, William Ochs, William Ohler, Levi Short, Orrin Smith, William Stone, Myron Trowbridge, Patrick Troy, of Bethel, Connecticut, Theophilus Abieniste, Andrew Aitken, Nicholas W. Allen, Thomas H. Allen, Daniel H. Barnes, Nicholas W. Barzin, Clemens Beschele, Frederick S. Blackburn, John Blake, Simon Blake, Herman H. Bohman, Nelson H. Booth, James N. Boughley, Thomas Boyd, John Bradshaw, Peter J. Brennan, Alphonse Bresson, Theodore Bright, Bryon S. Brooks, Andrew G. Brown, Chauncey H. Butler, James P. Callahan, John J. Callahan, Achille Canale, Thomas J. Cassidy, William Clancy, Elmer R. Clark, John H. Collins, Lewy W. Comes, Patrick Connolly, Michael Corbett, James D. Costello, John H. Craft, Byron W. Crane, James Crotty, John Crotty, Peter T. Currie, William Deakin, George F. Denton, James Dillon, William S. Dutcher, John Dyer, John Ellegett, Patrick Ellegett, Carl Erdman, Timothy H. Farrell, Patrick J. Feeley, Patrick J. Fisher, Emil Floyske, Thomas Foley, Peter Gallagher, Christian Gottlieb, Garni, William E. Gartner, Martin Gorman, Michael C. Griffin, Wright Hampson, David J. Hardy, Alexander Harkness, John Harkness, Patrick Hart, John Hassett, Stephen Havran, Michael Hennessey, George M. Herrick, Charles A. Hodge, Adolph Holdeichel, Nathan C. Hoy, William Humphries Patrick F. Hunt, Charles W. Hurd, Michael Hurd, Patrick E. Jaffrey, Daniel Kearns, Martin Keating, Thomas Keenan, Daniel P. Kelly, Michael F. Kenney, John Keogh, Charles J. King, Frank Kornhass, Frank E. Krebs, Martin Lauf, Edward D. Lees, John Leonard, Thomad Leonard, Michael F. Lynch, John Morris, Jeremiah McCarthy, Patrick J. McCarthy, Patrick T. McCarthy, Martin McCue, Thomas E. McGauley, Martin McGettrick, James F. McGlone, John McGlone, Peter McGlone, Patrick McGrath, Charles F. McHan, Thomas McHugh, Daniel McInerey, Frank Meath, Henry Messer, Henry C. Michael, George J. Miller, Gustav Mougin, Eugene L. Mulkin, Daniel Murphy, Timothy Murray, John B. Nowlan, William V. Nowlan, George T. Oakley, Peter O'Boy, Louis E. Orton, Daniel J. Osborne, Alvah S. Pearce, George H. Phillips, Peter Picken, Arthur I. Pickett, John Pribula, Jacob Prinz, Christian Rheinhold, Frank Rode, Frank E. Seaman, Hugh C. Shalvoy, Charles Shaffer, Frederic L. Stahl, George Stuckey, Michael E. Sullivan, William S. Sullivan, Joseph Tosi, Thomas E. Waters, Samuel S. Wilson, Frank K. Wildman, all of Danbury, Connecticut; Fanton W. Beers, Albert Berg, William A. Brennan, Stephen Carlin, Edward Cunningham, George A. Davis, Charles Flynn, Adison Hathaway, Peter F. Kearney, Patrick Keating, James Kinnane, Thomas Layhe, Charles Moore, S. Wallace Osborn, John E. Paul, Robert Pearson, John Redway, Owen Reilley, Daniel Riodan, John E. Rooney, Thomas F. Saunders, John W. Sculley, Max Singerwold, Charles

Smith, Frederick Taylor, Peter Ward, William J. Wiesheit, James Whitney, all of Norwalk, Connecticut, are plaintiffs in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Dated at the City of New York, in the Second Circuit, this 12th day of January, 1914.

ALFRED C. COXE,
Judge of the United States Circuit Court of Appeals, Second Circuit.

Due and lawful service of the above and foregoing citation on this 12th day of January, 1914, is hereby acknowledged and accepted.

WALTER GORDON MERRITT,
Of Counsel for Defendants in Error.

[Endorsed:] 4725. United States Circuit Court of Appeals, Second Circuit. At Law. No. 32. Martin Lawlor, et al., Plaintiffs in Error, v. D. E. Loewe, et al., Defendants in Error. Citation. Alton B. Parker, 111 Broadway, New York City; Frank L. Mulholland, Nichols Building, Toledo, Ohio, Attorneys for Plaintiffs in Error. United States Circuit Court of Appeals, Second Circuit. Filed Jan. 17, 1914. William Parkin, Clerk.

Endorsed on cover: File No. 24,051. U. S. Circuit Court Appeals, 2d Circuit. Term No. 900. Martin Lawlor et al., plaintiffs in error, vs. Dietrich E. Loewe and Martin Fuchs, partners under the firm name of D. E. Loewe & Co. Filed February 10th, 1914. File No. 24,051.

No. 358

Office Supreme Court.
FILED
OCT 6 1914
JAMES D. MAHER

IN THE

Supreme Court of the United States

OCTOBER TERM, 1914.

No. [redacted].

MARTIN LAWLOR, *et al.*,

Plaintiffs-in-Error,

vs.

DIETRICH E. LOEWE and MARTIN FUCHS, Partners, under the firm name of D. E. LOEWE & COMPANY,

Defendants-in-Error.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MOTION TO ADVANCE.

DANIEL DAVENPORT,
WALTER GORDON MERRITT,
Attorneys for Defendants-in-Error.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1914.

No. 900.

MARTIN LAWLOR, *et al.*,

Plaintiffs-in-Error,

vs.

DIETRICH E. LOEWE and MARTIN FUCHS, Partners, under the firm name of D. E. LOEWE & COMPANY,

Defendants-in-Error.

MOTION TO ADVANCE.

To the Honorable, the Supreme Court of the United States:

Statement of Matter Involved.

This is a suit brought by the defendants-in-error, hat manufacturers in Danbury, Connecticut, in September, 1903, against over two hundred members of a labor union called the United Hatters of North America, to recover treble damages in the amount of $240,000.00 under and pursuant to the Anti-Trust Act of July

2nd, 1890, 26 Stat., 209. Since the commencement of the suit, thirty-four defendants have died. After hearings on pleas in abatement filed by the defendant, a demurrer was interposed which was sustained by the Circuit Court on December 7th, 1906 (148 Fed., 924). Upon the judgment of dismissal then entered, the plaintiffs brought a writ of error to the United States Circuit Court of Appeals for the Second Circuit, and that Court thereupon certified certain questions arising thereon to this Court. The transcript of record in the Circuit Court of Appeals was brought to the Supreme Court of the United States by virtue of a writ of certiorari. The cause came on to be heard before the Supreme Court at the October Term, 1907, and that Court on February 3rd, 1908, rendered a unanimous decision overruling said demurrer and remanding the case to the Circuit Court for trial (208 U. S., 274). The case was on trial before a jury from the 13th day of October, 1908, until February 4th, 1910, and the Court directed a verdict for the plaintiffs leaving the jury to determine the amount of damages, and the jury rendered a verdict for the sum of $74,000.00, upon which judgment was entered for $232,240.12. The defendants sued out a writ of error to the Circuit Court of Appeals, which remanded the case for a new trial (187 Fed., 522). An application for a re-hearing was denied in a supplementary opinion (187 Fed., 527). The plaintiffs thereupon petitioned this Court for a writ of certiorari, which was denied (223 U. S., 729). The case was tried a second time in the summer and fall of 1912, resulting in a verdict for the full amount claimed in the *ad damnum* clause, to wit: $80,000.00, and a final judgment of $252,130.09. The defendants sued out a writ of error to the United States Circuit Court of Appeals, which unanimously affirmed the judgment (209 Fed., 721), and the case is

now before this Court on a writ of error from that judgment of affirmance.

The assignments of error present many questions relative to evidence, and the Court's charge and refusal to charge, but the most important question so raised is the liability of individual members of a labor union for the acts of the organization and its officers.

Reasons for Application.

1. The case has been once adjudicated by this Court upon the merits (Sub-Div. 4, Rule 26).

2. It is a case of great judicial importance, raising the question of the liability of members of a labor union for the acts of their organization and its officers.

3. It spite of the diligence of the plaintiffs in prosecuting the case, it has already been in the courts about eleven years and thirty-four defendants have died and have thereby been released.

DANIEL DAVENPORT,

WALTER GORDON MERRITT,

Attorneys for Defendants-in-Error.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 900.

MARTIN LAWLOR, *et al.*,
Paintiffs-in-Error,

vs.

DIETRICH E. LOEWE and MARTIN FUCHS, Partners, under the firm name of D. E. Loewe & Company,

Defendants-in-Error.

To the above named Plaintiffs-in-Error and to Alton B. Parker, Esq., and Frank L. Mulholland, Esq., their attorneys:

You, and each of you, will please take notice that the defendants-in-error will, on the 12th day of October, 1914, at the opening of court on the morning of that day, or as soon thereafter as counsel may be heard, move the above-entitled Court to advance the hearing of the above-entitled case.

DANIEL DAVENPORT,
WALTER GORDON MERRITT,
Attorneys for Defendants-in-Error.

The undersigned join in the request that this cause be advanced.

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No. 358.

Office Supreme Court, U. S.
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IN THE

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October Term, 1914.

MARTIN LAWLOR, *et al.*, (Defendants),
Plaintiffs-in-Error,

vs.

DIETRICH LOEWE and MARTIN FUCHS, Partners under the firm name of D. E. LOEWE & CO., (Plaintiffs),
Defendants-in-Error.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR PLAINTIFFS-IN-ERROR.

ALTON B. PARKER,
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Attorneys for Plaintiffs-in-Error.

E. H. TYRRELL, PRINTER, 206-8 FULTON STREET, NEW YORK.

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Supreme Court of the United States.

OCTOBER TERM, 1914.

No. 358.

MARTIN LAWLOR, *et al.*, (Defendants) Plaintiffs in Error,

vs.

DIETRICH LOEWE and MARTIN FUCHS, Partners Under the Firm Name of D. E. LOEWE & Co., (Plaintiffs) Defendants in Error.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

Brief for Plaintiffs in Error.

The defendants in this case, against whom a judgment was rendered on the verdict of a jury by the District Court of the United States for the District of Connecticut, which judgment was affirmed by the United States Circuit Court of Appeals for the Second Circuit, having filed herewith

a Writ of Error to the said Circuit Court of Appeals, respectfully submit the following brief.

STATEMENT OF FACTS.

Since it will be necessary to state many of the facts of the case in detail in the course of the argument, this statement will be confined to a general statement of facts which lead up to the argument.

NATURE OF THE ACTION.

This is an action under section 7 of the Anti-Trust Act of July 2, 1890, to recover threefold damages alleged to have been sustained by the plaintiffs because of a combination or conspiracy claimed to be unlawful under the Anti-Trust Act.

PARTIES TO THE ACTION.

In order to appreciate the real significance of this action, the importance of the questions involved and the far-reaching consequences which the decision of this Court may have, it is not enough to know merely who are the parties of record; it is necessary to know who is behind the ostensible parties and who, besides the parties to the record, will be affected by the decision to be rendered.

Plaintiffs.—According to the complaint, the plaintiffs are Dietrich E. Loewe and Martin Fuchs, co-partners under the name of D. E. Loewe & Co., in the business of manufacturing and selling hats at Danbury, Connecticut. But it is uncontradicted—in fact it appears by the testimony of Loewe himself—that the plaintiffs are not paying the counsel representing them; this is done

by the American Anti-Boycott Association (4-p. 1090), an association which was formed in the Spring or Summer of 1903 and whose membership seems to be guarded from publicity with some care (4-pp. 1094, 1095).

Defendants.—The defendants, of whom there were originally 197, but who by reason of death, insanity, releases and defects of service, now number 186, were all members of labor unions of hatters at Danbury, Norwalk and Bethel, Connecticut, at the time of the acts of which the plaintiffs complain (2-pp. 63, 64; 4-p. 1182).

But none of these men were made defendants because of any activity by them in causing injury to the business of the plaintiffs; upon the proof in this case their liability is based solely upon a claim of knowledge by them of, and acquiescence in, illegal acts by the officers and agents of the United Hatters of North America, with which the local unions to which they belonged were affiliated. Loewe testified as to defendant after defendant that he had never heard of him. He said that he did not know and had never heard of the defendants Reiley, Snigerwald, Weiseit, Whitney (4-pp. 1084 to 1086), Carlin, Davis, Kinnane, Layhe (4-p. 1087), Beers, nor Berg (4-p. 1088). And he testified generally as to the great bulk of the defendants that he had never heard of them prior to the commencement of this suit (4-pp. 1084 to 1090). As to one defendant, Byron R. Morgan, whom he did know, he said that he did not know of any act done by this defendant against the products of the Loewe factory, but that he was a member of the union (4-p. 1090). And so as to the defendants Kane (4-p. 1089) and Murray (4-p. 1089). Only a few of the defendants, Loewe said, worked for him at the time of the strike (4-p. 1090). He could name only three (4-p. 1091). And as to this

he was partly mistaken, for he said that Carl Upman was one of these men (4-p. 1091), although Upman is not a defendant.

The plaintiff Loewe further testified that he did not select the defendants; the selection was made by Mr. Davenport, counsel for the American Anti-Boycott Association and, through that association, counsel for the plaintiffs (4-pp. 1090, 1091, 1093), who selected those members of the unions only who owned their homes or had property (4-p. 1092). Mr. Davenport also volunteered a statement to this effect (4-p. 1092).

It is clear that this suit is brought against these members of local unions of hatters who own homes or have other property, not merely because they are collectively able to respond in damages for the injury claimed to have been sustained by the plaintiffs, but to destroy or injure the national organization of hatters, the United Hatters of North America, by making hatters who own property fearful of being members of labor unions. Realizing the danger involved in this suit, not only to itself but to all effective organizations of labor, the United Hatters of North America undertook to employ counsel and finance the defense on behalf of each of the defendants.

The controversy, then, is essentially between this secret association, known as the American Anti-Boycott Association, and this national organization of hatters.

RELATION OF DEFENDANTS TO SEVERAL ORGANIZATIONS DESCRIBED IN COMPLAINT.

All of the defendants are members of one or another of certain unions of "makers" or "finishers" located in Danbury, Bethel and South Norwalk in the State of Connecticut (2-p. 64; 4-p. 1182).

There are two branches of the fur or felt hat industry, viz: the "makers" and the "finishers". The former branch attends to the first stages of the manufacture, and the latter to the portion of the work which places the hat in a condition ready for the head of the wearer (2-p. 2).

The constitution and by-laws of Local No. 11 (Danbury Finishers) is printed at page 129 of volume 2 of the record. These are typical of the constitutions and by-laws of the other local hat-makers' and finishers' unions to which the defendants belong; in fact it is stipulated that this constitution and these by-laws shall stand as the constitutions and by-laws of all these local unions (4-p. 1183).

These unions are connected with the so-called "national" organization, known as the United Hatters of North America, which holds a convention once in four years (5-p. 1752), at which all local unions are entitled to representation on the basis of one delegate for every two hundred members or fraction thereof. Except when a convention is actually in session, the board of directors and the officers elected at the last convention are entrusted with the conduct of the affairs of the organization under the constitution and by-laws (5-pp. 1785, 1786).

The dues paid by the members of the local makers' and finishers' unions are paid to an officer of the local union, and are based primarily upon a percentage of actual earnings, part of which is retained for the purposes of the local organization, and part is turned over to the national organization of the United Hatters of North America (2-pp. 47, 48, 57, 77, 85, 86; 4-p. 1103).

Members are sometimes exempted from the payment of dues (2-pp. 48, 49). A member who is

over fifty years of age is generally exempt from payment of local dues and from attending meetings of his union (4-pp. 1217, 1363, 1376).

The local makers' and finishers' unions in Danbury, South Norwalk and Bethel are entitled to representation in the city and state federations, or central bodies, which bodies in turn are each entitled to one delegate in the conventions of the American Federation of Labor (2-pp. 52, 53, 57, 78, 86).

Prior to 1854 there were local unions of hatters in various cities of the United States, some dating back to the time of the Revolution. There was, however, no national association. But in that year a national convention of hatters was held in the city of New York and a national union was organized and called the Hat Finishers' National Association (4-p. 1101).

There also came into existence at a time which the record does not disclose a national association of hatters known as the Hat Makers' National Association.

In 1896 there was a convention of makers and finishers which resulted in an amalgamation of the two bodies, known as the Hat Finishers' National Association and the Hat Makers' National Association, and the United Hatters of North America was formed (2-p. 85; 4-p. 1102).

Prior to 1896 the Makers and Finishers were two distinct and separate national associations. There was not any antagonism between them, nor were they bound together by any ties of either an official or unofficial nature. It may be well to state, however, that in 1885 both national organizations met through the agency of their respective boards of directors, and adopted a union label, calling it the label of the United Hatters of North America. Since that time and up to 1896 both

organizations jointly paid all of the expenses of the label. Outside of this there was not any connection whatever, and as a consequence "The United Hatters of North America" only existed on paper. When the amalgamation took place in 1896 both national organizations went out of existence and became the United Hatters of North America in reality (4-pp. 1101, 1102, 1103).

Later in 1896, this national organization, the United Hatters of North America, became affiliated with the American Federation of Labor (2-pp. 168 to 171) and entitled to be represented at its annual conventions by two delegates (2-pp. 163, 164). The American Federation of Labor is, in turn, entitled to a per capita tax from the United Hatters (5-pp. 1889, 1890).

In respect to a good many of the defendants, it appears that they were members of one or another of the local unions long before the organization of the United Hatters of North America, and long before any affiliation of that organization with the American Federation of Labor (2-p. 64).

There is no allegation or complaint that the local unions, to which the defendants belong, the United Hatters and the American Federation of Labor, are in themselves conspiracies in restraint of interstate commerce. On the contrary, it must be manifest, taking into account the respectable antiquity and traditions of these hatters' unions, that, from the standpoint of a journeyman hatter, membership in one or another of such local unions, which is accompanied incidentally with relationship to the comparatively modern national and international organizations, may present social, sentimental and substantial attractions amply sufficient to justify membership therein.

HISTORY OF THE CASE.

The action was brought on September 14, 1903 (3-p. 592).

The defendants first filed a plea in abatement on the ground that there was an action pending on the same cause of action in the State of Connecticut. A demurrer to this plea was sustained. *Loewe* v. *Lawlor*, 130 Fed. 633.

The defendants next made a motion for correction of the complaint, which was denied. *Loewe* v. *Lawlor*, 142 Fed. 216.

A demurrer to the complaint was then interposed on the ground that the combination stated was not within the Anti-Trust Act, and the demurrer was sustained by the Circuit Court for the District of Connecticut. *Loewe* v. *Lawlor*, 148 Fed. 924. The case was then carried by writ of error to the Circuit Court of Appeals for the Second Circuit, which, after stating the facts, certified to this Court the following question: "Upon this state of facts can plaintiffs maintain an action against the defendants under section 7 of the Anti-Trust Act of July 2, 1890?" Both sides joined in asking that the entire record should be sent to this Court, which was done and the case came before the Court upon the complaint and demurrer. The Court decided that the complaint stated a cause of action within the statute and overruled the demurrer. *Loewe* v. *Lawlor*, 208 U. S. 274.

Answers were then interposed by the defendants, which denied all the material allegations of the complaint, and the case came on for trial on October 13, 1909. At the conclusion of the trial the court directed a verdict for the plaintiffs, sending to the jury the question of damages only. The jury assessed the damages at $74,000, which was trebled by the court.

The defendants then sued out a writ of error bringing the case before the Circuit Court of Appeals for the Second Circuit. The judgment was reversed, and the case remanded for a new trial, on the ground that there was conflicting evidence as to the knowledge by the defendants of the alleged illegal acts so that the question of liability was for the jury. A motion by the plaintiffs for a reargument was denied. *Lawlor* v. *Loewe*, 187 Rep. 522.

The plaintiffs then petitioned this Court for a writ of certiorari. The defendants did not oppose the petition, but it was denied. *Loewe* v. *Lawlor*, 223 U. S. 729.

The new trial was commenced on August 26, 1912, and, on October 11th, a verdict was rendered for $80,000, being the full amount demanded (1-p. 424), and a judgment was thereupon entered for thrice that amount together with an attorney's fee of $5,000 and costs and disbursements to the amount of $7,130.90, amounting in all to $252,-130.90 (1-p. 432).

The defendants thereupon sued out a writ of error to bring the case before the Circuit Court of Appeals for the Second Circuit (1-p. 1) and that court affirmed the judgment of the court below. *Lawlor* v. *Loewe*, 209 Fed. 721.

It is to review this judgment that the present writ of error is prosecuted.

QUESTIONS CONSIDERED IN THE BRIEF.

The questions which are considered in this brief may be summarized as follows:

1. The refusal of the trial court to instruct the jury as to the coercive character of the combination alleged in the complaint, as to the legality of the hatters' union label and as to the char-

acter of the boycott alleged, thereby refusing to instruct the jury as to the nature of the plaintiffs' cause of action.

2. The refusal by the trial court of instructions requested by the defendants as to the facts which would justify the jury in returning a verdict against the defendants, none of whom were participants in the alleged illegal acts, thereby refusing to make clear to the jury the basis of their liability.

3. The action of the trial court in charging the jury, in effect, that membership of the defendants in the labor unions to which they belonged and payment of dues by them might make them liable, thereby misleading the jury as to the basis of the liability of individual defendants.

4. The rulings of the court in admitting evidence, as follows:

a. Testimony as to the continued payment of dues by the defendants to their local unions and to the national organization after the commencement of this action.

b. Evidence to show knowledge by the defendants of the alleged illegal acts and conspiracy, consisting of paragraphs and articles in newspapers of the neighborhood of the residence of some defendants and in other publications.

c. Hearsay evidence, consisting of conversations with third persons as to whom there is no evidence to show that they were parties to the alleged conspiracy or as to whom the evidence shows that they were not parties thereto, letters written by such persons and newspaper publications.

d. Self-serving declarations.

e. Deposition containing no testimony material or relevant to the issues of the case, but disclosing the fact that the deponents declined to answer questions on the ground that their testimony might tend to criminate them.

5. The action of the trial court in allowing the plaintiffs to recover damages accruing after the commencement of the action.

ARGUMENT

I.

Refusal of Requests Explaining the Cause of Action.

The trial court refused to instruct the jury as to the precise nature of the cause of action alleged in the complaint, leaving the jury free to give a verdict against the defendant should it find that there had been some restraint of the interstate trade of the plaintiffs, even though it also found that no illegal means were employed to effect that restraint, that the sole purpose of the labor organizations which caused that restraint was to benefit themselves by strengthening their organizations and that such restraint of trade as resulted was merely incidental to the accomplishment of that purpose.

The requests refused relate (1) to the coercive character of the combination alleged in the complaint, (2) to the legality of the union label, when properly used, to further the legitimate objects

of labor organizations, and (3) to the nature of the boycott alleged in the complaint.

REQUESTS AS TO COERCIVE CHARACTER OF COMBINATION ALLEGED.

The circuit court of appeals erred in upholding the refusal of the district court to charge as requested in the first, second and third requests to charge, which are as follows:

1. THE COMBINATION CHARGED IN THE COMPLAINT FALLS WITHIN THE CLASS OF RESTRAINTS OF TRADE AIMED AT COMPELLING THIRD PARTIES AND STRANGERS INVOLUNTARILY NOT TO ENGAGE IN THE COURSE OF TRADE, EXCEPT ON CONDITIONS THAT THE COMBINATION IMPOSES. *Assignment of Error No. 1*, 5-p. 1931.

2. THE COMBINATION CHARGED IN THE COMPLAINT IS A COMBINATION DIRECTLY FOR THE PURPOSE OF PREVENTING THE PLAINTIFFS AND THEIR CUSTOMERS, IN OTHER STATES, AGAINST THEIR WILL, FROM CONTINUING TO CARRY ON AN EXISTING TRADE AND COMMERCE AMONG THE SEVERAL STATES AND IN PREVENTING THEM FROM ENGAGING IN AND CARRYING ON SAID TRADE AND COMMERCE BETWEEN THEM. *Assignment of Error No. 2*, 5-p. 1931.

3. TO BE ENTITLED TO ANY RECOVERY IN THIS ACTION, THE PLAINTIFFS MUST SHOW THAT A COMBINATION OR CONSPIRACY WAS FORMED FOR THE DIRECT PURPOSE OF COMPELLING THE PLAINTIFFS AND OTHERS INVOLUNTARILY NOT TO DEAL TOGETHER, IN THE COURSE OF INTERSTATE TRADE, AND MUST ALSO SHOW THAT THEY WERE INJURED IN THEIR PROPERTY OR BUSINESS BY REASON OF SUCH INVOLUNTARY COMPULSION, OR BY REASON OF SOME ACT DONE FOR THE PURPOSE OF COMPELLING THE PLAINTIFFS AND OTHERS INVOLUNTARILY NOT TO DEAL TOGETHER IN THE

COURSE OF INTERSTATE TRADE. *Assignment of Error No. 3*, 5-p. 1931.

The alleged "combination", "conspiracy" and "general scheme" which forms the basis of the action is referred to generally in a number of the paragraphs of the complaint, as in the 8th, 10th, 13th, 14th, 15th, 17th, 18th, 19th, 20th and 21st paragraphs, but it is in the 16th paragraph that the nature of the alleged combination or conspiracy is described.

In that paragraph (vol. 1, p. 11), it is alleged that

> "the defendants, together with other persons, uniting with them in the combination known as the United Hatters of North America have been for many years, and now are, engaged in a combined scheme and effort to force"

all fur manufacturers against their will to unionize their shops

> "by restraining and destroying the interstate trade and commerce of such manufacturers, by means of intimidation of, and threats made to such manufacturers, and their customers, in the several states, by boycotting them, their products and their customers."

Therefore, as was said by this Court (Loewe *v.* Lawlor, 208 U. S. 274) in overruling the demurrer to the complaint (p. 294):

> "The combination charged falls within the class of restraints of trade aimed at compelling third parties and strangers involuntarily not to engage in the course of trade except on conditions that the combination imposes."

In view of the allegations of the complaint as thus construed by this Court, it is submitted that

it was error for the district court to refuse to charge the jury as requested in these three paragraphs.

The charge, as reduced to writing by the trial judge and read to the jury, will be searched in vain for language which is in the least equivalent to that of these requests. It is true that the charge does contain references to a scheme by the defendants to "force" manufacturers of hats to organize their workmen into labor unions (vol. 1, p. 414, fol. 1654), to a scheme to boycott the plaintiffs' trade in other states to "force" the plaintiffs to unionize their factory (vol. 1, p. 415, fol. 1659) and to a conspiracy to directly interfere with the plaintiffs' interstate trade if necessary to "compel" the plaintiffs to unionize their factory (vol. 1, p. 415, fol. 1659).

But these words, it will be observed, are employed in the charge in reference to the efforts of the hatters' organization to unionize the factory of the plaintiffs. The use of these words in this connection surely is not equivalent to a charge that the combination alleged and to be proved is a combination "compelling third parties and strangers involuntarily not to engage in the course of trade except on conditions that the combination imposes."

If this be so there cannot be found anywhere in the charge language which even remotely approaches an instruction to that effect.

The application of the requested charges to the case as presented by the evidence will be made to appear later.

REQUESTS AS TO LEGALITY OF LABEL.

The Circuit Court of Appeals erred in upholding the refusal of the District Court to charge

the jury as requested in the ninth and tenth requests to charge, which are as follows:

9. THE UNION LABEL OF THE UNITED HATTERS IS, IN THE STATES WHERE IT IS REGISTERED ACCORDING TO LAW, A STATUTORY TRADEMARK, AND THE OFFICERS AND AGENTS OF THE UNITED HATTERS HAVE THE SAME RIGHT TO SOLICIT TRADE FOR HATS BEARING THEIR LABEL AS ANY MERCHANT HAS TO SOLICIT TRADE FOR GOODS BEARING HIS TRADEMARK. *Assignment of Error No. 9*, 5-p. 1932.

10. IN SO FAR AS ANY OF THE PLAINTIFFS' CUSTOMERS, OR ANY RETAIL DEALERS HANDLING THE PLAINTIFFS' HATS, WERE NOT INFLUENCED TO CEASE DEALING WITH THE PLAINTIFFS, OR HANDLING THE PLAINTIFFS' HATS, EXCEPT BECAUSE OF AN INCREASED DEMAND FOR HATS BEARING THE UNION LABEL OF THE UNITED HATTERS; THEIR TRADE WITH THE PLAINTIFFS, OR IN THE PLAINTIFFS' HATS, WAS NOT RESTRAINED, FOR THE PURPOSES OF THIS CASE, AND THE PLAINTIFFS CANNOT RECOVER IN THIS ACTION FOR DAMAGES RESULTING FROM THE LOSS OR DIMINUTION OF BUSINESS SOLELY DUE TO AN INCREASED DEMAND FOR UNION LABEL HATS. *Assignment of Error No. 10*, 5-p. 1933.

The charge of the trial court contains nothing whatever that can be claimed to cover these requests; indeed, it does not contain a single reference to the union label, either by name or by implication.

The jury was, therefore, at liberty to find that any use of the label, such, for example, as advertising it for the purpose of increasing the public demand for hats made by union labor, was illegal if it resulted in interfering with the interstate trade of the plaintiffs.

Under the allegations of the complaint the jury should not have been permitted to find that there

was anything illegal in the use of the union label, unless it was employed by the defendants as an instrument to aid them in carrying out a conspiracy to compel third parties and strangers involuntarily not to engage in the course of trade except on conditions imposed by the combination. That it was so employed is alleged in section 20 of the complaint (vol. 1, pp. 15 & 16, fols. 60 & 61) and again in section 21 (vol. 1, p. 18, fol. 70).

As will appear later, there is ample evidence in the record which would have justified the jury in finding that the label was not so employed.

REQUESTS AS TO CHARACTER OF BOYCOTT TO BE PROVED.

The circuit court of appeals erred in upholding the refusal of the district court to charge as requested in the seventh, eighth, eleventh, fourteenth and fifteenth requests, which are as follows:

7. SOME DEGREE OF COMPULSION OR INTIMIDATION BROUGHT TO BEAR UPON THE PLAINTIFFS' CUSTOMERS OR AGAINST PERSONS HANDLING THE PLAINTIFFS' HATS, IN ORDER TO COMPEL THEM INVOLUNTARILY TO CEASE OR LIMIT THEIR DEALINGS WITH THE PLAINTIFFS, OR IN THE PLAINTIFFS' HATS, MUST BE SHOWN BEFORE THE PLAINTIFFS CAN RECOVER DAMAGES FOR THE LOSS OR DIMINUTION OF BUSINESS WITH SUCH CUSTOMERS OR RETAILERS. *Assignment of Error No. 7*, 5-p. 1932.

8. IN SO FAR AS ANY OF THE PLAINTIFFS' CUSTOMERS, OR ANY RETAIL DEALERS HANDLING THE PLAINTIFFS' HATS, WERE NOT INFLUENCED TO CEASE DEALING WITH THE PLAINTIFFS, OR HANDLING THE PLAINTIFFS' HATS, EXCEPT BECAUSE OF THE FEAR OF LOSING THE PATRONAGE OF ORGANIZED LABOR, OR THE HOPE OF

KEEPING OR GAINING, THE PATRONAGE OF ORGANIZED LABOR, THEIR TRADE WITH THE PLAINTIFFS, OR IN THE PLAINTIFFS' HATS, WAS NOT RESTRAINED FOR THE PURPOSES OF THIS CASE, AND THE PLAINTIFFS CANNOT RECOVER IN THIS ACTION FOR DAMAGES RESULTING FROM LOSS OR DIMINUTION OF THE TRADE OF SUCH CUSTOMERS. *Assignment of Error No. 8*, 5-p. 1932.

11. THIS ACTION IS NOT BROADLY FOR INTERFERENCE WITH THE GOOD-WILL OF THE PLAINTIFFS' BUSINESS, BUT FOR INVOLUNTARILY PREVENTING THE PLAINTIFFS AND THEIR CUSTOMERS IN OTHER STATES FROM DEALING TOGETHER IN THE ORDINARY COURSE OF INTERSTATE TRADE, IN PURSUANCE OF A COMBINATION OR CONSPIRACY DIRECTLY TO PREVENT THEM FROM SO TRADING TOGETHER, AND THE PLAINTIFFS ARE NOT ENTITLED TO RECOVER IN THIS ACTION IN DAMAGES FOR LOSS OF TRADE WITH CUSTOMERS IN OTHER STATES, EXCEPT IN SO FAR AS THE PLAINTIFFS MAY SHOW THAT THEIR CUSTOMERS WERE COMPELLED INVOLUNTARILY TO CEASE OR LIMIT THEIR DEALINGS WITH THE PLAINTIFFS OR IN THE PLAINTIFFS' HATS. *Assignment of Error No. 11*, 5-p. 1933.

14. THE PLAINTIFFS ARE NOT ENTITLED TO RECOVER IN THIS ACTION IN DAMAGES FOR LOSS OF TRADE WITH ANY GIVEN CUSTOMER, UNLESS THEY CAN SHOW BY A FAIR PREPONDERANCE OF EVIDENCE THAT THE LOSS OF TRADE WITH SUCH CUSTOMER WAS CAUSED BY THE ACTS OF SOME OF THE DEFENDANTS, OR THEIR AUTHORIZED AGENTS, DONE IN PURSUANCE OF A COMBINATION OR CONSPIRACY TO COMPEL SUCH CUSTOMERS INVOLUNTARILY NOT TO DEAL WITH THEM IN THE ORDINARY COURSE OF INTERSTATE COMMERCE. *Assignment of Error No. 14*, 5-p. 1933.

15. IF YOU FIND THAT THE DIRECT AND IMMEDIATE INTENT OF THE OFFICERS AND AGENTS OF THE UNITED HATTERS OF NORTH AMERICA WAS TO UNIONIZE THE PLAINTIFFS' FACTORY, AND THAT THEY DID NOT

OTHERWISE PREVENT, OR INTEND TO PREVENT, THE PLAINTIFFS AND THEIR CUSTOMERS IN OTHER STATES, FROM DEALING TOGETHER, THAN BY A STRIKE FOR THE PURPOSE OF COMPELLING THE PLAINTIFFS TO UNIONIZE THEIR FACTORY, AND BY INFLUENCING THE PLAINTIFFS' CUSTOMERS IN OTHER STATES VOLUNTARILY TO DIVERT THEIR TRADE TO OTHER MANUFACTURERS UNTIL SUCH TIME AS THE PLAINTIFFS SHOULD UNIONIZE THEIR FACTORY, THEN YOUR VERDICT SHOULD BE FOR THE DEFENDANTS. *Assignment of Error No. 15*, 5-p. 1933.

Not only did the court refuse to charge in the words of these requests but failed to incorporate their substance in any part of its charge to the jury. The court's definition of conspiracy (vol. 1, p. 416, fols. 1661-1662) is not sufficiently specific to accomplish this. And the references to the alleged scheme to prevent the sale of the hats of the plaintiffs in other states than the state in which they were manufactured (vol. 1, p. 413, fol. 1652, p. 415, fol. 1657), to a conspiracy entered into by the defendants with the intent of boycotting the plaintiffs' trade in other states (vol. 1, p. 415, fol. 1659) and to the boycotting of the plaintiffs' trade in other states than Connecticut (vol. 1, p. 417, fol. 1668, p. 418, fol. 1669, p. 419, fol. 1675) are not accompanied by any words showing that it was necessary for the plaintiffs to show the employment by the representatives of the labor organization of any coercive measures whatever. There is nothing else in the charge which supplies this omission. Taking the charge as a whole, the jury was not only justified in believing, but in substance told, that the defendants were liable if the evidence established a purely voluntary withholding or withdrawal of patronage from the plaintiffs if it resulted in injury to their interstate trade.

But this is not sufficient under the allegations of the complaint, which, as has been said, charges a combination in restraint of trade "aimed at compelling third parties and strangers involuntarily not to engage in the course of trade except on conditions that the combination imposes." Not only is this the nature of the alleged conspiracy as described in paragraph 16 of the complaint, but the allegations as to the alleged boycotts in paragraphs 20 and 21 assert the employment of coercive means. For example, it is alleged in paragraph 21 that the defendants, in pursuance of the said combination and conspiracy and to carry the same into effect, did, in addition to employing other coercive measures, falsely represent to wholesale dealers, their customers, and the public generally in states other than Connecticut, that the plaintiffs had discriminated against the union men in their employ, etc.,

> "in order to prejudice, and did thereby prejudice, the public against the plaintiffs and their products, and in order to intimidate, and did thereby intimidate, said wholesale dealers and their customers, in states other than Connecticut, from purchasing hats from the plaintiffs by reason of the fear of the prejudice created against said hats" (vol. 1, pp. 16-17, fols. 63-66).

The evidence before the jury called for the giving of the instructions which were refused. It is not as if the only conclusion which could have been drawn by the jury was that the so called boycotts proved were of a coercive nature.

Witness for the plaintiffs after witness for the plaintiffs testified that the agents and representatives of the labor union, who approached them for the purpose of inducing them to handle only union hats and not to handle the hats made by the

plaintiffs or other manufacturers who had no right to place the union label on their product, confined themselves to persuasive measures, and made no use of threats or other coercive means. This will be shown later.

APPLICATION OF INSTRUCTIONS REFUSED TO THE EVIDENCE.

Not only were the instructions refused called for by the allegations of the complaint as construed by this Court, but they were clearly applicable to the case as presented to the jury by the evidence.

In a case such as this, in the trial of which the law of evidence was disregarded to an extraordinary degree and anything and everything which was offered by the plaintiffs was, on one pretext or another, allowed to go to the jury, it is a matter of the greatest difficulty to keep an outline of the evidence within reasonable limits as to space. The mass of so-called evidence is so great.

An attempt will be made, however, to condense, in as small a compass as possible, so much of the record as will serve to show that there was a conflict of evidence as to every material fact in issue sufficient to justify a verdict for the defendants had the jury been given proper instructions.

Negotiations Preceding Strike.

For a long period before the withdrawal of the workmen from the Loewe factory on July 25, 1902, representatives of the hatters' unions had been negotiating with the plaintiffs with a view to persuading them to establish union conditions in their factory.

The first step was taken by James P. Maher, Treasurer of the United Hatters and President of

a local union at Danbury, who, acting on his own responsibility, or perhaps as president of the local union, and not under instructions by the executive board of the United Hatters (5-pp. 1834, 1874, 1884), some time in November, 1900, called on the plaintiff Loewe, at the factory, with a letter of introduction, and broached the subject of unionizing the factory, giving reasons why it would be of advantage to the plaintiffs to unionize their factory. Loewe stated the reasons why he thought that would not be to the advantage of the business and told Maher that he would write his decision (4-pp. 977, 978, 979).

Loewe, subsequently to this first meeting with Maher, addressed a letter to him, giving reasons for not unionizing the factory, and asking him to submit in writing for the consideration of the firm the reasons why it would be advisable for the firm to unionize the factory (4-pp. 979, 980, 981).

Nothing more seems to have been done until the general executive board met at Danbury on March 5, 1901, and again on March 6, to consider the question of taking some action in reference to the Loewe factory (5-pp. 1875, 1876). Loewe, in response to a request by telephone, met the labor representatives, who were Martin Lawlor, John Moffitt, John Phillips and James P. Maher, at the second of these meetings, and the matter of unionizing the factory was discussed in detail (4-pp. 982 to 987).

About a week after this conference on March 6, 1901, Maher and Lawlor came to see Loewe at his factory and asked him if he could give them any decision in the matter, and he said that he had been busy looking into the constitution and by-laws of the United Hatters which had been given him, with the result that he had a number

of questions which he wished to ask them. A meeting between Maher, Lawlor and Loewe was arranged for the 20th of March, at which these questions were thoroughly discussed between them, it being understood at the end of the conference that Loewe would make known his decision by letter (4-pp. 987 to 995).

Soon after the conference on the 20th of March, Loewe, with the assistance of Charles H. Merritt, of Danbury who, with Mr. Davenport, counsel for the plaintiffs in this case, and others, later helped to organize the American Anti-Boycott Association (4-pp. 1093, 1094), prepared a letter to Mr. Maher, which was mailed about April 22, 1901, finally declining to unionize his factory and giving the reasons for declining to do so (4-pp 995 to 999; 5-pp. 1832, 1876, 1877).

This put an end to the negotiations. But on July 24, 1902, an attempt was made to reopen them. Maher called Loewe on the telephone asking him to meet the officers of the United Hatters at a hotel in Danbury, but Loewe declined to do so, giving as the final reason for declining that he did not see that he had any business with the national officers (4-p. 1000).

All the testimony relating to these negotiations shows a persistent and patient attempt to induce Loewe, by arguments, to establish union conditions in the factory. The arguments consisted of attempts to demonstrate to him that it would be to the best interests of the business to do so.

No threats to employ unlawful means to force him to establish union conditions in the factory were made.

There is testimony by the plaintiff Loewe that, at the conference on March 6, 1901, Mr. Moffitt said to him that they hoped to induce him, "in a peaceful way," to unionize his factory, but, if not,

they would "force it." What followed is described by the witness thus:

> "I jumped up from my seat, I says: 'Mr. Moffit, do you mean to say you want to use force if I don't come in peacefully'? He says, 'Well, yes, to be frank with you, we will use force'; then after a little lapse said 'that is, we shall create such a demand for the union label that you will be forced to unionize.'"

The witness further testified, in response to a leading question, that Moffitt also said that if the unionizing of the factory could not be accomplished in a peaceful way they "would use their usual methods to bring it about" (4-pp. 986, 987).

There is here no threat to use unlawful means; the threat is to employ means which are not peaceful. The strike is not unlawful although it is not peaceful. To create a demand for union-made goods is not unlawful, although it is no more peaceful than other legitimate trade competitions.

The jury, if properly instructed, could easily have found that there was here no threat to employ illegal means, but that the threat, if proposing to do what one has a right to do may be called a threat, was to inaugurate a lawful strike and to place union-made goods in competition with the non-union Loewe goods—to abandon the peaceful methods which had been so far employed, that is, arguments, and inaugurate a legitimate industrial war.

Counsel for the plaintiffs have contended that even at the time of Maher's first interview with Loewe, "it was the intention to 'exhaust all means' to unionize the factory and do all the things which eventually were done; even at this early date the conspirators contemplated an interstate boycott if necessary to unionize the Loewe factory" (Brief in Ct. of App. p. 47).

It is true that Maher testified that he intended to take active steps in the Loewe matter when he first visited Loewe in 1900; he intended to carry it right down to a conclusion, to go as far as he could to get Mr. Loewe's factory a union factory (5-p. 1886), and to waste and exhaust all means that he could (5-p. 1887).

But this testimony is not sufficient to justify a jury in finding, or counsel in contending, that illegal means to secure the desired result were contemplated. There were many legal means which might be employed, such as the strike and the withdrawal of their patronage from Loewe goods by union men and women, their friends and sympathizers.

When the evidence relating to these preliminary negotiations is given its true value, it seems clear that no illegal means were threatened or contemplated at any time during these negotiations, and that the jury could not have otherwise found had it understood that an attempt to unionize the plaintiffs' factory by means of a lawful strike and a voluntary withdrawal of patronage from the Loewe goods was not in itself illegal.

Strike on July 25, 1902.

Immediately upon Loewe's refusal on July 24th to meet the officers of the hatters' union, arrangements were made to call a shop meeting of the union hatters employed in the Loewe factory.

First Shop Meeting.—And on the morning of July 25, a meeting of the employees in the Loewe factory was held in a hall which had been hired for the purpose (5-pp. 1761, 1762). There were present 50 or 60 union men, makers and finishers (5-pp. 1727, 1762), but no non-union men (5-p. 1762), although 3 or 4 non-union men left the fac-

tory but were told by the unionists to go back to work, which they did (3-pp. 753, 759).

The meeting was addressed by Mr. Maher, who was then president of the Local No. 10 (Danbury Makers). And Mr. Barrey, who was president of Local No. 11 (Danbury Finishers), also said a few words but not much (5-pp. 1726, 1727, 1765).

There is some conflict in the evidence as to whether Maher at this or the succeeding meeting referred to the Berg and Roeloffs controversies and to the methods employed in those controversies, but this is not material here for we are now dealing only with the evidence which shows whether there was coercion in connection with the strike or whether it was of a voluntary nature. Hence, we shall, for the present, merely set forth the general description of Maher's talk given by the defendants' witness Shalvoy, who, of all the witnesses, gives the most comprehensive account of it. Shalvoy testified that the general drift and meaning of Maher's talk to the men was as follows (5-pp. 1727, 1762, 1764):

> "Mr. Maher stated to the meeting that he had several conferences with Mr. Loewe in an effort to unionize, or to bring about the unionizing of the factory, but it was without avail, and Mr. Maher then stated that inasmuch as Mr. Loewe would have nothing to do with the organization—that he did not think that the members of the organization should work for Mr. Loewe any longer, and he said that there was a number of the fair factories at that time or union factories, that were asking help, and in justice to them, why the fair men in the union factory or in Mr. Loewe's factory, should go to the fair factories and support the union factories that were employing our members, with the help they needed."

Mr. Barrett's talk, according to Shalvoy, was along the same lines as Maher's except that he did

had told him that Maher had said at one of the meetings, and, in urging the admission of this testimony over the objection of the defendants, Mr. Davenport said (4-p.1009):

> "Now, it has been shown to your Honor by Mr. Haigh the threat that was made, if any of them stayed, that he would be fined $500 or $1000 or possibly his card taken away. Mr. Haigh just testified to that in the interim. Now Mr. Loewe is visited by one of these men and he gives the reason for his leaving, and it is precisely that".

Loewe was permitted by the court, over the objections of the defendants, to give this testimony (4-pp. 1011, 1012) but it is not "precisely that", nor like that; there is no word of corroboration of what Haig said in Loewe's testimony as to what Gildea told him that Maher had said at one of the meetings. There is no mention of any proposed fine in this Gildea conversation. Gildea, according to the witness, spoke of what Maher had said about the action of the officers of the United Hatters, when the Roelofs trouble was settled, in refusing union cards to hatters who had continued in the Roelofs factory during the strike, but that is a different matter. It may be that none of these men had ever been members of hatters' unions.

The defendant Shalvoy, who was present at both meetings of the Loewe employees, testified that he did not hear Mr. Barrett say to Joseph Haig that if he did not come out he would be fined five hundred or a thousand dollars or maybe lose his card (5-p. 1771).

But even if a fine had been threatened or imposed it is not certain, in the present state of the authorities, that it would amount to such coercion as the law condemns. In *Jetton-Delke Lumber*

Co. v. *Mather*, 53 Fla. 969, it was held that an employer of labor is not entitled to an injunction restraining a labor union from peaceably enforcing its rules against its members to the extent of expulsion of such as work for those who employ nonunion labor. The employer in this case contended that the unions exercised unlawful coercion upon their members by fines and threats of expulsion to cause them to refrain from working for him, thereby interfering with his right to a free labor market. In denying the contention that this was unlawful coercion the court said:

> "This was a risk voluntarily assumed by the members entering the unions, and if no longer willing to pay the price, if the advantages derived are not equal to the burdens assumed, each member has a perfect right to withdraw from the union; to seek to get back his former employment, and to be protected therein".

On the other hand the majority of the Massachusetts Supreme Judicial Court in *L. D. Willcutt & Sons Co.* v. *Discoll*, 200 Mass. 110, held that a labor union cannot impose fines upon its members to coerce them to join a strike to the injury of one seeking their services, and that an employer injured thereby is entitled to an injunction. Chief Justice Knowlton and Judge Sheldon dissented. The dissenting opinion is based in part at least, upon the theory that the labor organization being legal, and the strike in question lawful, the enforcement of a lawful by-law inflicting a fine upon the members of the union not obeying strike orders would likewise be lawful, both as to the members and their employer or employers.

This decision is made the subject of a carefully prepared note in 23 L. R. A. (N. S.) 1236, where the case is also reported, and the conclusion is reached that the minority, rather than the majority, opinion states the law.

In *Associated Hat Manufacturers v. Baird-Unteidt Co.*, 87 Conn. , it was held that an association of manufacturers might enforce a rule imposing a stipulated fine of $5000 upon members who employed only union workmen in their factories in violation of an agreement between the members of the association against maintaining union, or "closed", shops, and could collect the fine by an action at law.

Even if the threat to impose a fine was made, it was an empty threat, for neither Mr. Barrett nor Mr. Maher had the power to impose a fine (5-p 1770, 1787), nor could the meeting itself, which was a shop meeting, that is a meeting of the workmen in a particular factory, and not a meeting of a union. which may be composed of the employees of a number of factories, have imposed a fine (5-p. 1787).

However, for the present purpose, it is sufficient to say that, in the state of the evidence, the jury could have found that there was no threat of a fine had its attention been directed to importance of proof of coercion in making out the plaintiffs' case.

Threat to Exclude from Union Men Not Joining in Strike.—The plaintiff Loewe was permitted to testify that one Gildea had told him that Maher had said to the workmen at one of these shop meetings that if they did not go out they would be treated the same way as the workmen who refused to join in the Roeloffs strike were treated and would not be allowed to become mem-

bers of the union (5-p. 1012). Assuming that this amounts to intimidation or coercion, which it does not in the legal sense of the terms, the jury was not bound to believe that such a statement was made by Maher. Against this hearsay testimony they had the testimony of the witness Shalvoy who said that he did not hear Maher say, and Maher did not say, at either the first or the second meeting, that "those who were not with the union would be treated in the same way we treated those in the Roeloffs factory, meaning, they would not take them back into the union again" (5-p. 1730).

Satisfaction of Employees with Conditions in Factory.—As is usual in cases arising out of labor disputes accompanied by strikes, an attempt was made to show that the striking employees were entirely satisfied with the conditions existing in the Loewe factory and that their withdrawal was the result of the intermeddling and dictation of the officers of their unions.

To prove this the plaintiff Loewe was permitted to testify that before mailing the letter which he and Mr. Charles H. Merritt had jointly prepared (*supra*, p. 22), which he sent to Maher about April 22, 1901, he read it to his employees in differnt departments of the factory for their approval, and the only replies which he got from any of the men were a few expressions of satisfaction with the conditions.

But a jury, necessarily having in mind the fact that an employer has the power to discharge, to promote and to fix wages, could hardly attach much importance to the statements elicited from some of the employees in this way fifteen months before the strike.

Besides, the jury had before it evidence of dissatisfaction. On June 26, 1901, about two months after this letter was read, seventeen men withdrew from the Loewe factory, and, of these, seven returned to work while the remaining ten, it seems, never returned. On September 18th of the same year thirteen employes withdrew from the factory, including one of those who had previously withdrawn and returned to work (3-pp. 734, 735).

Maher testified that there had been difficulties in the Loewe factories of different natures (5-p. 1875), and there had been talk around town about establishing union conditions there (5-p. 1878).

Shalvoy testified that he heard different remarks by the non-union men who attended the second meeting to the effect that they were willing to stay out as long as the union men; they were not very well satisfied with the conditions that existed in the Loewe factory at that time, and on that account alone, or principally, they were willing to stay with the union men. They all expressed a desire to join the union (5-p. 1729). On cross-examination this witness went into a more detailed account of the grievances of these men, mentioning the names of several of them and stating the nature of their grievances (5-pp. 1774 to 1776).

There is testimony to show that the movement to establish union conditions had its origin in Danbury. Maher testified that, when he made his first call on Loewe, he was not acting under instructions of the general Executive Board of the United Hatters, but went on his own responsibility (5-p. 1874); he as an individual was the only one responsible for the first interview with Mr. Loewe (5-p. 1884). Martin Lawlor, evidently referring to the controversy up to, and at the

time of, the strike, said that it was "entirely a local affair at that time, and Mr. Maher was dealing with it rather as the president of the Danbury Local Association than as the national treasurer" (5-p. 1834). The officers of the national organization took part in some of the negotiations preceding and during the strike, but evidently in purely an advisory capacity.

It later became a national affair, that is one in which the national organization, The United Hatters of North America, took an active part, but that was not until the management of the controversy was turned over to Mr. Moffit, as we shall see later in the section entitled "*Beginning of the Alleged Boycott*" (p. 39).

Evidence and Circumstances Showing Absence of Coercion.—Over against these lame attempts to convince the jury that the strike was accompanied by coercion we have positive testimony, and, because of the relation of the witnesses to the plaintiffs at the time of testifying, convincing testimony, that there was no coercion.

Frederick Frede, a witness for the plaintiffs who was in the employ of the plaintiffs at the time of testifying, said that, at the time of the strike, he was advised by several union men to join the strikers (3-pp. 752, 757, 761) and that another union man, about two weeks after the strike called him a scab (3-pp. 757, 758), but there is nothing in his testimony to indicate that he was threatened or that any attempt was made to coerce him. In the brief for the plaintiffs in the circuit court of appeals (page 53), it is said, referring to this man, that "one of the foreman who refused to go out was villified and threatened by Mr. Maher". But he was not threatened; there is not a word in the record

which justifies that statement. And he was only villified to the extent of being called a "scab" with profane emphasis. And he did not join the strikers.

The plaintiffs' witness, Carl Lueders, who was in their employ at the time of testifying (3-p. 734), said that he had conversations with a number, maybe twenty, of the strikers at the time of the strike. "They wanted to know", the witness said, "what I was going to do, and I says I am going to stay". . . . "Nobody directly asked me to go out" (3-pp. 744-745).

And, in this connection, it is of some significance that a son of the plaintiff Martin Fuchs, the plaintiff Loew's partner, was working in the factory at the time and went out with the strikers (4-p. 1095).

There is not a scintilla of evidence that there was any violence in connection with this strike. There is not even any evidence that there was picketing. And there could have been little opportunity for picketing, for, according to the uncontradicted testimony of the witness Shalvoy, after waiting for a short time to see what Mr. Loewe would do, most of the men obtained employment in union factories (5-p. 1760).

Clearly the jury must have found, had the issue been properly presented to them, that there was no violence, no threat, no coercion, nor anything of an illegal nature in connection with this strike.

The efforts of the labor representatives to adjust the differences between the plaintiffs and their employees in a peaceful manner, without forcing the plaintiffs, by means of a continuance of the strike, to accede to the demands of the workmen, did not cease with the strike. On the Wednesday following the strike, July 30, Mr. Maher

telephoned to Mr. Loewe, asking for another conference, and with some difficulty succeeded in arranging a meeting (4-pp. 1016 to 1018). Again, on August 1, Mr. Moffitt sought out Mr. Loewe for another talk (4-p. 1018 to 1021). And an effort was made to have Mr. Loewe attend a meeting of the Board of Directors of the United Hatters which was held at Danbury on August 6th, but he declined (5-p. 1731).

It is as clear as need be that the jury might well have believed that the strike and the whole trouble, instead of being caused by tyrannical exercise of authority by the officers of the hatters' unions, resulted from the Teutonic stubbornness of Loewe and the encouragement given him by his friend Mr. Merritt, who was perhaps then, in company with his son, who is one of counsel for the plaintiffs in this case, and Mr. Davenport, the other counsel, contemplating and planning the organization of the American Anti-Boycott Association, or, if, as may well be, it was then practically organized, arranging for the co-operation of that association.

This secret society was hatched possibly as early as six months after the strike (4-p. 1094), but its period of incubation is unknown.

During the trial of this cause counsel for plaintiffs strove hard to make it appear, but, as we have seen, with little success, that the striking employees of Loewe were the victims of wicked labor agitators, meaning thereby their chosen officers. Perhaps it might be more truly said that Loewe was the victim of the patriotic Anti-Boycott Association, of which, as the record shows (4-p. 1094), he chose to become a member.

But suppose that the men were ordered out by the officers of their unions and that they went out because of those orders and solely because of

them, and, suppose the jury found this to be a fact, that would not have authorized the jury to find that there was coercion. In the case of *Thomas* v. *Cincinnati, etc., R. Co.*, 62 Fed. 803, Judge Taft, after stating that "it must be conceded . . . that the employees of the receiver had the right to organize into or to join a labor union which should take joint action as to their terms of employment," said (p. 817):

> "They have the right to appoint officers who shall advise them as to the course to be taken by them in their relations with their employer. They may unite with other unions. The officers they appoint, or any other person to whom they choose to listen, may advise them as to the proper course to be taken by them in regard to their employment, or, if they choose to repose such authority in any one, may order them, on pain of expulsion from their union, peaceably to leave the employ of their employer because any of the terms of their employment are unsatisfactory."

This decision by Judge Taft was followed in *Delaware, etc., R. Co.* v. *Switchmen's Union*, 158 Fed. 541, 544, wherein the above excerpt from the opinion was quoted with approval, and in *Aluminum Castings Co.* v. *Local No. 84*, 197 Fed. 221, 223. Judge Taft's language is also quoted with approval and applied in *Saulsberry* v. *Coopers' International Union*, 147 Ky. 170, 174.

And in *Wabash R. Co.* v. *Hannahan*, 121 Fed. 563, it was argued on behalf of the railroad company that the threatened strike was resorted to by the defendants, not in good faith to redress grievances or secure desired concessions, but as a result of a combination and conspiracy to accomplish the ulterior purpose of securing recog-

nition of their unions or brotherhoods, as authoritative agents or representatives of its members, in all their dealings with the company, and also to unionize the roads of the company, and that the strike would have the effect of forcing the minority of the brotherhood members who voted against it, and also non-union employees in service upon the road of the employer, out of work without their consent and even against their wishes. In answer, Judge Adams said (p. 571):

> "This kind of argument enters deeply into the domain of political science, and might well be addressed to a body of constructive statesmen or men originally contemplating a labor organization. It is an argument that would be pertinent against the organization of society into government. The will of the individual must consent to yield to the will of the majority, or no organization either of society into government, capital into combination, or labor into coalition can ever be effected. The individual must yield in order that the many may receive a greater benefit. The right of labor to organize for lawful purposes and by organic agreement to subject the individual members to rules, regulations, and conduct prescribed by the majority is no longer an open question in the jurisprudence of this country. I entirely agree with the views expressed on this subject by Judge Taft in *Thomas* v. *Railway Company*."

The same view has been taken in England by the House of Lords in the case of *Jose* v. *Metallic Roofing Company of Canada*, [1908] App. Cas. 514. In that case the men were not ordered out on a strike by the officers of their union, but (what amounts to the same thing) by a resolution of their unions. The plaintiff sued members of the unions claiming, among other things, that calling the men out on a strike when they were

entirely satisfied with their condition constituted an actionable conspiracy. The trial judge charged the jury, in effect, that if any of the union men left the employment of their own volition, of their own free will, and without any regard to the resolution that was passed by the union, that was within their right, but if they left because of the resolution there was an illegitimate exercise of power and, if it was exercised to the detriment of the plaintiff, the union was liable in damages. In the opinion, after quoting the part of the charge which we have summarized, it is said (p. 518):

> "The same view is expressed in subsequent passages of the learned judge's charge, and their Lordships think that these passages cannot but have meant to the jury that the calling out of the men on strike by resolutions of the unions, if those resolutions were the cause of the strike, was an actionable wrong, without regard to motive, and without regard to the conspiracy alleged. That is a ruling which, in their Lordships' opinion, cannot be supported".

Purpose of the Strike—The plaintiffs introduced the testimony of witnesses and newspaper publications to prove that the purpose of the strike was to unionize the Loewe factory. That, of course, was precisely the purpose. And the Loewe employees had a right to inaugurate a strike to accomplish that purpose. They had a right to insist upon union hours and union wages as a condition of continuing in the employment of the plaintiffs. And, just as the plaintiffs had a right to employ workmen who did not belong to labor unions, so their employees had a right to refuse to work in the company of workmen who were not members of the hatters' union. It is

the absolute right of every workman to exercise his own option in regard to the persons with whom he will agree to work or with whom he will continue to work, and, therefore, union workmen may refuse to continue to work with those who are not members of their union.

Adair v. *United States*, 208 U. S. 161, and cases cited in margin of page 175;
Allis-Chalmers Co. v. *Iron Moulders' Union*, 150 Fed. 155, 172;
National Protective Assoc. v. *Cumming*, 170 N. Y. 315;
Allen v. *Flood*, (1898) App. Cas. 1.

BEGINNING OF THE ALLEGED BOYCOTT.

As we have seen, Mr. Loewe had been told, during the negotiations preceding the strike, that, if the controversy between him and his union employees could not be adjusted in a peaceful way, the hatters' union would create such a demand for the union label that he would be forced to unionize the factory. But this step was not definitely decided upon until later. Martin Lawlor testified positively that, as far as he knew, there was not at the time of the strike any intention on the part of anybody connected with the United Hatters of North America to send out agents on the road to place union hats in direct competition with the Loewe goods (5-p. 1830). And Shalvoy's testimony is to the same effect (5-p. 1739). The so-called boycott, or the withdrawal of their patronage from the Loewe goods by members of labor unions and their friends in various parts of the country, came later.

On the 6th day of August following the strike a meeting of the Board of Directors of the United Hatters of North America was held at Danbury. The Loewe controversy was made the special order of business for the afternoon session and was thoroughly discussed at that session. Mr. Maher made a report as to the action which he had taken, so that the Board of Directors was fully informed as to what had been done. The action of Mr. Maher and the General Executive Board was indorsed and a resolution was adopted giving the General Executive Board "full authority to deal with the Loewe matter in such a way as in their judgment the best interest of the trade will be served" (5-pp. 1730 to 1732, 1772, 1773). Later, but just when does not appear, the General Executive Board turned the management of the matter over to John A. Moffitt (5-pp. 1831, 1836), who was then, and until 1911, president of the United Hatters of North America (2-p. 13; 3-p. 892; 5-p. 1841).

With the assumption of control of the controversy between the hatters' union and the plaintiffs by President Moffitt, the scene shifts from Danbury, where and in the neighboring towns of Bethel and Norwalk all of the defendants lived (2-pp. 64 to 69), and our further inquiries lead us into many parts of the country, even as far as the Pacific Coast.

Our task now will be to inquire into the probative value and effect of the evidence presented to the jury to establish a coercive boycott in pursuance of a conspiracy of the kind alleged in the complaint, and to determine whether the jury, had it been properly instructed, could not reasonably have found that the plaintiffs had not sustained the burden of proving the allegations of the complaint.

Label of the United Hatters.

It is, as we have seen, alleged in the complaint that the label of the hatters' union was used by the defendants as an instrument to aid them in carrying out the alleged conspiracy against the plaintiffs and in carrying on the alleged coercive boycott by employing it for the purpose of identifying and describing the hats of the plaintiffs and singling them out to be boycotted (Sec. 20, vol. 1, pp. 15 & 16, fols. 60 & 61; Sec. 21, vol. 1, p. 18, fol. 70). This, as we have claimed, called for the giving of the instructions as to the label which were refused. We shall now show, and show in a few words (for the matter is very simple), that the evidence also called for the giving of these instructions.

Adoption of the Label—The label of the hatters' union was adopted in November, 1885 (4-pp. 1108, 1096), nearly seventeen years before the strike by the Loewe workmen. There were then two national unions of hatters, but in that year both national organizations met through the agency of their respective boards of directors, and adopted a union label, calling it the label of the United Hatters of North America. Since that time and up to 1896, when the two national unions were amalgamated as "The United Hatters of North America," both organizations jointly paid all of the expenses of the label (4-p. 1102).

Protection of Union Labels by State Laws.—In 1908 laws for the registration and protection of trade-union labels were in force in forty-one states and territories. *Spedden on The Trade Union Label*, p. 97, printed in *Johns Hopkins University Studies in Historical and Political Science, 1910.*

The constitutionality of these statutes has been uniformly upheld. They have been held not to violate any personal rights or principles of public policy, nor the constitutional provision against deprivation of property without due process of law, nor the guaranty of the equal protection of the laws. 7 *Labbatt on Master & Serv. p.* 8656, sec. 2786. And it has been held that the boycotting of non-union workmen, to deprive them of the legitimate fruits of their labors, cannot be deemed the purpose for which a statute for the protection of union labels was procured, so as to make the statute invalid. *Perkins* v. *Heert,* 158 N. Y. 306.

As appears from the certificates of registration in evidence, the label of the United Hatters of North America has been registered under the laws of twenty-five states (4-pp. 1185, 1186).

Purpose of the Label.—The purpose of the label is obvious. It is to enable union men and women, all those who are in sympathy with, and who wish to encourage, labor organizations, and those to whom the fact that goods are union-made conveys an assurance of sound workmanship and hygienic conditions of manufacture, to discriminate in favor of such goods. As was said by Ernest Howard Crosby, in an article printed in the Journal of the United Hatters for November, 1900 (4-p. 1188):

> "The principal organizations for the benefit of the wage earner are the trades unions, and they have devised a kind of trademark, the union label, which is an assurance to the customer that all the employees who had a part in producing the work upon which this label appears enjoyed fair wages, fair hours and proper sanitary conditions. We know of no other way of obtaining a like assurance, as it is manifestly impossible for each customer

to examine into the labor conditions back of the goods he buys".

A concrete example of the benefit to be derived from the label is furnished by the experience of an athletic club in New York City in purchasing uniform hats. In placing the order it was stipulated that they should be union-made goods. The unscrupulous jobber filled the order with non-union hats bearing a counterfeit label. This fraud was discovered, however, and the order was cancelled (4-pp. 1187, 1188). Obviously, had there been no label in use by the hatters' union, the fraud would have been successfully carried out.

Advertising the Label.—The union label would serve no useful purpose whatever, but merely be a cause of useless expense, were not some means adopted to bring its identity and significance to the attention of the purchasing public. So means were devised for advertising it.

Many of the usual advertising methods were adopted. Various articles bearing a representation of the union label of the hatters were widely distributed, these articles including a watch fob in the shape of a hat, a match box, an aluminum sign, a celluloid sign, a badge, a lead pencil, a celluloid cover, a perpetual calendar, a small card, and a celluloid rule (5-pp. 1858, 1859). That these articles were widely distributed appears from the fact that they were all bought in large quantities, in lots of from five to ten thousand of each, usually ten thousand. The match box was bought in still larger quantities, that is, in lots of from one hundred to two hundred thousand (5-p. 1859). Some of these articles had on them advertising matter in addition to the union label (5-p. 1859). For example, the match box, ac-

cording to the testimony for the plaintiffs, presumably introduced for the purpose of showing the illegality of the label, had printed on one side the following: "Compliments of the United Hatters of North America. Genuine labels are sewed in the hat under the sweatband and are perforated on edges like postage stamps. Ask for it." On the reverse side was "Buy no hats without the label", followed by a representation of the label of the hatters' union (3-p. 905).

These articles were distributed by the advertising agents of the United Hatters (5-p. 1858), and also, in the case of some of them, by mail.

Another means of advertising was for the advertising agents to visit labor unions in various parts of the country and deliver talks on the label, and to visit merchants telling them about the label and informing them that there was a growing demand among members of unions and others for goods bearing the label. But this will be treated more fully when we come to the work of the agents.

Also organizations were formed for the special purpose of creating a demand for the label. Thus, organizations of women were formed whose object it was, according to their slogan, to "Boom the Label" (4-p. 1189).

All these methods of advertising, and promoting a demand for, the label had been adopted before, some of them long before, the controversy involved in this suit arose.

The Label as a Boycotting Instrument.—Counsel for the plaintiffs made great efforts to show that the label is a boycotting instrument. They put in evidence extracts from the Journal of the United Hatters and from the American Federationist, nearly all published before the contro-

versy involved in this suit arose, showing the number of circulars sent out to the labor organizations throughout the country advertising the label (2-p. 93), the decision of a convention of the United Hatters to employ advertising agents (4-p. 1115), the cost of advertising (4-pp. 1114, 1115), the number of labels used per month (4-p. 1104) and the success achieved generally (4-pp. 962, 963, 1180). And, to clinch the matter, they put in evidence an editorial from the Journal for July 1903, reading as follows (3-p. 538):

> "There is a 'boycott' called the union label, which neither courts, militia, or Pickertons can touch. It will abolish sweat shops, scabs, unfair employers; it will mow a swathe like a McCormack reaper through the ills labor complains of. It requires neither strike, picketing, nor trouble; just see that the goods you are going to buy has that label in it, or else you will not take them, and presto, the thing is done."

Here we have one of scores upon scores of instances where the attorneys for the plaintiffs, and the trial court in admitting evidence, treated the use of the word "boycott" as sufficient, regardless of the sense in which it was employed, to stamp the act or thing to which it was applied with illegality.

There are boycotts which the law condemns, but "the word does not necessarily import illegality". *Gill Engraving Co.* v. *Doerr*, 214 Fed. Rep. 111, citing *Mills* v. *United States Printing Co.*, 99 App. Div. 605, affirmed, 199 N. Y. 76, wherein Mr. Justice Jenks said (p. 611):

> "I think that the verb 'to boycott' does not necessarily signify that the doers employ violence, intimidation or other unlawful coercive means, but that it may be correctly used

> in the sense of the act of a combination in refusing to have business dealings with another until he removes or ameliorates conditions which are deemed inimical to the welfare of the members of the combination, or some of them, or grants concessions which are deemed to make for that purpose. And as such a combination may be formed and held together by argument, persuasion entreaty or by the 'touch of nature' and may accomplish its purpose without violence or other unlawful means, *i. e.* simply by abstention, I think it cannot be said that 'to boycott' is to offend the law".

Calling a withholding a patronage, which is purely voluntary and not even the carrying out a previous agreement, a boycott, and saying to the jury that it is condemned by the law, as was in effect done when this editorial comment was read to it by the attorneys for the plaintiffs, is, of course, too absurd for extended comment.

Since such evidence, if we may call it evidence, was introduced to prove the allegations that the union label was employed as an instrument to carry on the coercive boycott alleged in the complaint, it does not seem necessary to waste words urging upon this court that the trial court erred in refusing to instruct the jury as requested in regard to the label.

Suppose the National Consumers' League, an organization having for its purpose the bettering of the conditions of women and child labor in department stores and factories (*Laidler on Boycotts*, p. 33), should adopt a label to be bestowed upon, or withheld from, factories accordingly as they do or do not establish the conditions favored by the League, and suppose that the members of the League and those in sympathy with its purpose should withhold their patronage from all

goods not bearing the label, would this render the members of the League liable under the Anti-Trust Law to a manufaturer, whose interstate commerce might be restricted, on the theory that the label was a means of prosecuting an illegal boycott? Certainly not. And there is no law preventing the National Association of Manufacturers and the American Anti-Boycott Association from adopting a non-union label and having their members, and their friends and all the enemies of labor unions refrain from buying goods which do not bear their non-union label.

The withholding of patronage from other than union-label goods by members of the United Hatters was, so far as appears in the record, purely voluntary; a union hatter who bought non-union goods when he could buy union-label goods in their stead would undoubtedly be looked upon with disfavor by some, and perhaps many, of his associates, but there was no means of punishing him, as by fine or suspension from the organization, if he did so.

In the brief which was filed for the plaintiffs in the Circuit Court of Appeals it is said, at page 100, that "*The United Hatters Constitution fined all purchasers of non-union hats*". This is not so. The text of the constitution and by-laws adopted in May, 1903, to which is appended "standing resolutions" and "label laws", is set forth in record (2-pp. 101 to 129). There are also references in the record to, and extracts from, the constitutions adopted in 1896, when the United Hatters was organized by the amalgamation of two national hatters' unions, the constitution adopted in 1900 and the one adopted in 1907, about four years after the commencement of this action. But neither in the constitution of 1903 and its ap-

pendixes nor in any of the extracts from the other constitutions is there a single word which justifies, in the slightest degree, the statement that "the United Hatters Constitution fined all purchasers of non-union hats". In order to afford the counsel for the plaintiff an opportunity to eliminate this misstatement from the brief which they are to file with this Court we shall give the references to all the places in the record where these constitutions are mentioned and where extracts from them are to be found. These references are as follows: 2-pp. 8, 9, 101 to 129, 143, 144; 3-p. 958; 4-pp. 986, 1183; 5-pp. 1752, 1753.

Advertising Agents.

That special agents were employed by the defendants to carry out the conspiracy alleged in the complaint is alleged in section 18 (1-p. 13, fol. 49) and section 20 (1-p. 16, fol. 61) of the complaint. And in section 21 it is expressly alleged that these agents were employed by the defendants to visit and "to intimidate and threaten" wholesale dealers, and the customers of wholesale dealers, who bought goods from the plaintiffs (1-p. 18, fol. 71). This called for the giving of the instructions as to the coercive character of the combination alleged and as to the coercive character of the boycott alleged, as does also the evidence in the case, which is the subject with which we are now particularly concerned.

Employment of Agents.—Counsel for the plaintiffs have sought to make it appear that the advertising agents were employed by the United Hatters with special reference to the Loewe, the Roeloffs and the Berg controversies.

But the strike in the Berg factory, which was the first of these troubles, took place on September

22, 1899 (2-p. 17), and there is uncontradicted evidence that the placing of men on the road to visit unions and to call on dealers in reference to the label was not only contemplated before that time (5-p. 1739) but that agents were actually placed on the road before the trouble with Berg & Co. (5-p. 1741).

And these agents were not employed merely when there was trouble between the hatters' union and some manufacturer; they were on the road all the while (5-pp. 1747, 1748).

The constant employment of "at least six men to be kept on the road advertising the union label and fight the sale and use of non-union made hats" was recommended in the report by President Moffitt to the 1900 convention of the United Hatters (2-p. 30). And a committee recommended to this convention that "at least six men be hereafter kept on the road advertising the union label and fighting the sale of non-union made hats." This was amended so that the General Executive Board determined the number of men to go on the road (2-p. 13).

At the 1907 convention of the United Hatters, a resolution was offered, subsequently adopted and made a part of the constitution of the United Hatters, reading in part as follows (3-pp. 957, 958):

> "The General Executive Board shall, and they are hereby empowered to appoint agents to be placed on the road for the purpose of agitating for and advertising the union label of the United Hatters of North America, and to perform such other duties as may be transmitted to them by the Board."

Appointment and Control.—The agents were appointed by the General Executive Board of the United Hatters and were under the direct charge

of President Moffitt to whom they made their reports (5-pp. 1746, 1840).

Names of Agents.—The names of the advertising agents who are referred to in the record in connection with the alleged boycott against the plaintiffs are as follows: William C. Hennelly, Daniel P. Kelly, H. T. Scollin, F. J. O'Haire, C. J. Lee and James Byrne.

But it seems that C. J. Lee had been dropped from the staff of advertising agents some time in the first half of 1903 (2-p. 92, 3-pp. 507, 508).

Duties of Agents.—The duties of the advertising agents, as we have seen from the resolution adopted by the 1900 convention of the United Hatters providing for the employment of an increased number, were "advertising the union-label and fighting the sale of non-union made hats." And members of the hatters' union, who were especially well-informed as to union matters, understood this to be the work of the agents. For example, Hugh C. Shalvoy, who had for many years been either secretary or secretary-treasurer of the Danbury Finishers' union, testified that he understood that the agents were placed upon the road to advertise the label of the United Hatters. their duties being to go around to different dealers, retail dealers or jobbers, advertising the label, and endeavoring to have the retailers and jobbers handle hats that bore the label of the United Hatters (5-pp. 1733, 1749). And Martin Lawlor, who had long been vice-president of the United Hatters at the time of the commencement of this suit (5-pp. 1829, 1830), testified that, while the agents directed their attention to the customers who bought goods from particular non-union manufacturers, that was a very small part of their duties, their duties were to do general advertising

and transact the business of the labor organization (5-p. 1868).

Generally as to the Work of the Agents.—Information as to the manner in which the advertising agents actually discharged their duties is to be gathered from a vast amount of printed matter in the record, such as extracts from the American Federationist, the Journal of the United Hatters and newspapers published in California, Oregon, Virginia and elsewhere, and from the testimony of merchants and the employees of merchants in various parts of the country who were visited by these agents. Most of this evidence and so-called evidence will be referred to later; and we shall, for the present, merely give a general outline of the work of the advertising agents, basing the outline chiefly on the published reports of the agents themselves.

Distribution of Advertising Matter.—As we have seen in discussing the label of the United Hatters, the various articles which had been devised as a means of advertising the union label were distributed by the agents (5-p. 1858). Thus, under the date of August 21, 1903, Agent Hennelly wrote that he had recently visited eleven towns in California and "billed each town with large and small cards" (5-pp. 578, 579). And Agent O'Hare, in a report published in the Journal for January, 1903, states that he advertised Richmond, Manchester, Petersburg and Fulton, Va., with the hangers and small cards (3-p. 508).

Agent O'Haire in a letter published in the Journal for January, 1903, giving an account of work done by him in Richmond and other places in Virginia advertising the label, gave the following description of an effort by him to interest the members of the Virginia Legislature in his work (3-p. 508):

"The Legislature is in session here, and they have passed some laws in regard to Child Labor. This afforded me a good opportunity to do some advertising. I got permission from the Sergeant at Arms to distribute our small cards on each of the representatives' desks. While doing this I was besieged with questions in regard to our label. My work that day will bear some good fruit.

"There were many in that body who were wearing the Stetson hat. They promised me that when they would buy another hat, they would see that it had that stamp in it. When I was leaving them they congratulated me on behalf of our organization in being up-to-date in our method of advertising and creating a demand for our label."

Appearance Before Labor Unions.—An important part of the work of the advertising agents was to appear before the labor unions throughout the country to make them acquainted with the label.

In a report by Agent W. C. Hennelly, dated Pittston, Pa., April 23, 1903, and published in the Journal of the United Hatters for May, 1903, Mr. Hennelly, after naming the different places in Pennsylvania where he had been working, said (3-p. 505):

"Lancaster is well organized—the members there have the right spirit; they insist that the label is the only guarantee that they will accept as to any articles being union made."

In a report by Agent Hennelly, dated Portland, Oregon, August 21, 1903, and published in the Journal for September, 1903, he tells of visiting the meetings of the unions in eleven California towns, addressing them on behalf of the label, telling them of the present trouble and how they could give help in their locality (3-p. 578).

In discouraging the purchase of non-union goods by members of labor unions, the agents by no means limited their efforts to the Loewe non-union hats, nor even to non-union hats; they discouraged the purchase by union men and women of any goods not bearing a union label.

In the Journal for June, 1903, there is a news item from the *Pittston (Pa.) Industrial Advocate* reading in part as follows (3-p. 506):

> "William C. Hennelly, representing the United Hatters of North America, was in this city this week trying to discourage the sale of hats made by D. E. Loewe & Co., of Danbury, Conn., where the hatters are on strike for better conditions and union wages. He addressed the Central Labor Union on Thursday evening, and, among other things, said that eight-tenths of the hats made bore the union label. He showed the delegates how the union label was sewed in the hats and gave the reasons for doing so. He said that there was not an article made but what could be procured with the union label on, if the union men would show to the dealers that they would buy no other kind. It would be the means of encouraging a majority of the factories manufacturing those goods, and consequently better the condition of thousands of employees. Mr. Hennelly explained to the delegates that when they bought goods without the label they were encouraging the scab and patronizing those who were willing to take their places during the recent trouble in this locality; or in other words they were boycotting the union men who stood by them in the time of need".

Agent Scollin, in a report dated Omaha, March 10, 1903, and published in the Journal for April, 1903, referring to his appearances at the meetings of the labor unions in Omaha, said (3-p. 533):

"I was very much surprised to hear members get up in several of the meetings that I addressed and say that they always thought J. B. Stetson's hats had the label in them".

In a report by Agent James Byrne, dated February 17, 1903, published in the Journal for March, 1903, a visit to Atlanta, Georgia, is described and it is stated that at none of the hat houses there could he discover the hats he was in search of (meaning, undoubtedly, the Loewe and possibly the Stetson hats), but he was greatly surprised at the large number of non-union hats which found sale in Atlanta, and he was told by the dealers that there was not much call for the union label. During his stay in the city he met the central labor body and nearly all the locals and asked their co-operation in creating a demand for goods bearing the union label, and they seemed to be favorably impressed with the idea (3-pp. 528, 529). He then proceeded to Rome, Ga., where he found that much the same conditions obtained as in Atlanta regarding non-union hats and non-union everyt!ing else, but none of what he expected to find (meaning, no doubt, Loewe and possibly Stetson hats). He met the central labor union and went over the same ground about forming committees to push union made goods (3-p. 529). At Macon, Ga. he did not find the Loewe hats, but he found many hats of non-union make and talked "to the central labor union—on the subject of union labels in general and the Hatters' label in particular" (3-pp. 529, 530).

Sometimes the agents, when calling upon labor unions, urged the appointment of committees to visit the merchants and ask for label goods (3-pp. 528, 529) and the adoption of resolutions to be sent to the merchants.

In a report by Agent Henry T. Scollin dated Denver, Colorado, March 24, 1903, published in the Journal for April, 1903, Scollin says that in Denver he had (3-p. 532) "a committee of six appointed from the various unions who will visit the merchants of this city, asking them to substitute some other make of hat to push, instead of the Stetson, which they are now advertising and pushing with so much vigor".

In a report by Agent O'Haire, published in the Journal for January, 1903, O'Haire states that he had visited all the unions in Richmond, Petersburg, Manchester and Fulton, Va., and all the unions in Richmond promised their support. The central labor union, of Richmond, at his request, and the cigar makers' union had committees appointed which called upon T. D. Stokes, but with no better success than O'Haire had had (3-p. 507). He refers to the arduous character of his work and, but says it can't come too hard or fast "as long as we accomplish our object and create a better demand for our label in the south; my instructions about the label at the meetings are listened to very attentively and our label is always sure to get their endorsement before I leave the hall" (3-p. 508).

In the Journal for April, 1903, there is an account of the appearance of Agent Scollin before the Trades Assemblies in Denver and the adoption by them of a resolution in regard to J. B. Stetson & Company, informing the merchants of the city that the Stetson Company had for many years been one of the greatest opponents of organized labor in the hatting world, and that it was the earnest request of all labor organizations of the city that they should purchase no more of the non-union products of that

firm until it should be granted the right to use the label of the United Hatters (3-p. 534).

Calling Upon Dealers.—The advertising agents also called upon the dealers in hats at the various places which they visited and told them about the union label and about the manufacturers who were not operating under union conditions.

Agent Hennelly in a report dated Portland, Oregon, August 21, 1903, and published in the Journal for September, 1903, tells of having recently visited all of the hat dealers in eleven California towns (3-p. 578).

In a report by Agent O'Haire, published in the Journal for January, 1903, O'Haire speaks of calling on T. D. Stokes, of Richmond, Va., a wholesale dealer who bought hats from the plaintiffs, and, receiving little encouragement, calling on 34 stores selling hats, of which 29 handled the Loewe goods which had been bought from Stokes. These dealers told him that they were ignorant of the fact that this hat was not union made, and said that they would give all possible support to the hatters' union in the fight for right and justice, would have a talk with Mr. Stokes about handling this hat and tell him that they would not be able to handle it until the factory was unionized and it had the label. He called on the retailers in neighboring towns, and found that they knew nothing about the hatters' union label, but would thereafter do the best they could to handle hats with the label (3-p. 597). He and Agent Lee again called upon Mr. Stokes but with no better success than before (3-pp. 507, 508).

There is a report by Agent Hennelly, dated March 21, 1903, in the Journal for April, 1903, which is too long to set out in full, but reads in part as follows (2-pp. 474 to 476):

"I am still in the Keystone State and am finding plenty to do, both in advertising and in trying to convince the retail and wholesale hat trade of this state that they can very easily get along without non-union hats and especially without the goods from the unfair Danbury concern, where our men are on a strike.

I have experienced some difficulty in a few cases with retail dealers along those lines, but they will profit from their experience. I feel that it is money well spent to convince a dealer that the labor organizations will not patronize a concern which is handling unfair goods or patronize any retail dealer who will patronize a wholesale house which persistently handles such goods. I feel that we treat both the wholesale and the retail dealer with all possible fairness when we go to them and acquaint them of a strike in a factory, we do not go to them and say that they should or should not buy goods from such a concern; we simply state the true conditions as we see and know them, and it is their business whether they buy from such a concern or not. After they are notified of such a condition existing and they continue to patronize such a concern then they know they are doing so against the wishes of some of their customers, therefore must expect to lose their patronage and when they lose them, then it dawns on them they really never did own all their customers' body and soul."

In the Journal for June, 1903, there is a news item from the *Pittston (Pa.) Industrial Advocate* reading in part as follows (3-p. 506):

"William C. Hennelly, representing the United Hatters' Union of North America, was in this city this week trying to discourage the sale of hats made by D. E. Loewe & Co., of Danbury, Conn., where the hatters are on strike for better conditions and union wages. He is visiting the retail dealers and acquaint-

ing them of the jobbing houses who are handling the product of this unfair concern."

DEALERS BUYING DIRECTLY FROM LOEWE & CO.

We have now come to the consideration of the various acts which are directly connected with the alleged boycott. And we shall first examine the evidence—all the evidence in the record so far as that is possible—which shows the means which were employed to influence those merchants, mostly wholesale dealers, who bought goods directly from the plaintiffs, with a view to determining whether the jury, if properly instructed, could not reasonably have found, at least so far as these dealers are concerned, that there was no coercive boycott.

Threats of Boycott or Fear of Boycott.—There is testimony by some of the plaintiffs' witnesses, most of it quite vague, to the effect that their firms were threatened with a boycott if they did not either write to Loewe asking him to put the union label in his hats or stop dealing in the Loewe hats. And there is testimony by other of these witnesses to the effect that their firms stopped dealing with the plaintiffs for fear of a boycott. These witnesses, whose testimony will be found at the pages in the record to which references are made, are as follows: David Kline, of Louis Kline & Co., wholesale dealers in hats at San Francisco (3-pp. 819-824); Allenberg Leopold, who had been manager for the firm of C. H. Meyer & Brothers, wholesale dealers in hats at San Francisco (3-p. 668); William P. Montague, who manufactured hats and sold hats on commission in New York City (3-pp. 765, 766); Louis Edelstein, of the firm of Wernick, Edelstein & Company, wholesale dealers in hats at Philadel-

phia (3-pp. 485-486). And Martin Triest, manager and treasurer of Triest & Co., of San Francisco, testified that he was visited by Agents Hennelly and Kelly on July 2, 1903 (3-p. 587), when Hennelly told him that, if his company did not stop trading with D. E. Loewe & Co., it "would have to suffer the consequences" (3-pp. 587, 588).

Most of this testimony, as we have said, is very vague. Martin Triest, as we have seen, testified that he was told by Hennelly that his firm "would have to suffer the consequences" of continuing to deal in the Loewe goods, but there is nothing in this testimony to show what was meant by this; it may have meant nothing more than that the business of the company would suffer, if it continued to handle the non-union Loewe goods, because of the increasing demand for goods with the union label. And it is not clear what the witnesses who testified that they were threatened with, or were afraid of, a boycott meant by the word boycott; they may have meant nothing more than the insistence by organized labor upon union-made goods to the exclusion of non-union goods. For example, the plaintiffs' witness Marsh, who had been buyer for the Gate City Hat Co., of Omaha, wholesale dealers in hats, testified that he was called upon by three men, representing some union there, who asked him to discontinue handling Loewe hats, which were non-union goods, and stated that they were going to boycott non-union hats made by that concern (3-p. 541). He stopped buying hats from Loewe because he did not want to antagonize the union (3-p. 540), his reason for believing that he would antagonize them being "the fact that they said that they would not handle or would not use those non-union hats manufactured by Loewe" (3-p. 543).

The plaintiffs' witness Middlekauff, a Baltimore wholesale dealer in hats, testified that customers of his, whom he was not required, under the ruling of the court, to name, gave as their reasons for not buying Loewe goods that "they were afraid to buy the goods because of the fear of being blacklisted by the local unions" (3-pp. 727, 728). But his testimony on cross-examination raises a doubt as to whether he did not mean that the reasons why the customers would not buy the Loewe goods, or at least one of the reasons given, was that the goods "didn't have the union label" (3-pp. 731, 732).

Employment of Persuasive Means.—On the other hand there is testimony, some of it direct and positive testimony, to the effect that only persuasive means were employed to induce these dealers to stop buying from Loewe & Co.

The pressure brought to bear upon T. D. Stokes, of Richmond, Va., is fully described by Mr. Stokes himself in his deposition for the plaintiffs. When asked to state the conversation which took place between him and Agent O'Haire, he said (3-p. 515):

> "I think he told me that there was some difficulty between the labor unions and Mr. Loewe's factory, and that we were purchasers from Mr. Loewe and he hoped we would discontinue buying goods from Mr. Loewe."

When asked what he said in reply to O'Haire, he said (3-p. 515):

> "I replied to him that we could not accede to his request."

Later he said (3-pp. 518, 519):

> "Well, the first visit of Mr. O'Haire, he told me of this trouble at the factory of D. E. Loewe & Co., and asked me to discontinue the use of their goods. I told him I could not. Then subsequently there were some of the representatives of the trades union here, Mr. Mullen and Mr. Krouse, as well as I remember —possibly there might have been some one else with them. They asked me, I think, to write Mr. Loewe and ask him to unionize his factory."

This he did. And again he said (3-pp. 519, 520):

> "Then it seems to me there was this delegation of the retail clerks that came to see me—in a very friendly attitude they were—and tried to use their influence to me, expressing the kindest feelings towards our firm, etc., to get us to discontinue the use of D. E. Loewe & Company's goods. My recollection is that I told them that we could not; that we would have to continue the use of Loewe's goods."

Mr. Stokes, it appears, finally abandoned the Loewe goods. When asked, "What, if anything, did those men say to you to bring you to the conclusion of giving up further dealings in the goods of D. E. Loewe & Co." and, "Did they or not suggest to you at any time that it would be to your advantage to give up the goods of D. E. Loewe & Co.," he answered (3-p. 522):

> "In my interviews with them, as well as I remember, they rather used persuasive arguments than threats, so far as my interviews with them were concerned, and so far as I remember those interviews."

John Reding of the Moore, Smith Company, a wholesale dealer in hats and caps at Boston which

bought from Loewe & Co., testified for the plaintiffs that he was visited by a delegation of three representing some hatters' union in the first part of February, 1903 (3-pp. 553-554). Describing the attitude of this delegation the witness said (3-p. 553): "While they might not directly ask me not to deal with them, they thought it would be for our interest not to." Again, he said (3-pp. 555, 556): "I cannot just exactly tell the conversation because it was long ago; but they intimated to me that it would be better for us not to use the goods. I told them, we have some goods here in the store that we have bought, and some on orders, goods that are sold, and I proposed to use these goods. They did not object so much to our selling what we had, providing we didn't buy any more. They did say they thought it would be for our interest not to use the goods." Later he said (3-p. 556): "I can't say it was a threat."

The plaintiffs' witness William E. Middlekauff, who was engaged in the business of jobbing in hats at Baltimore, Md., in 1902 and 1903 (3-p. 726), testified that he was called upon by Agent Hennelly in the summer of 1902 or 1903 who wished him to discontinue buying goods from Mr. Loewe. That was all of the conversation he could recall, and he did not stop dealing with D. E. Loewe & Co. on Hennelly's statement (3-pp. 727, 731).

The plaintiffs' witness Hesse, buyer for J. J. Seeds & Co., at Philadelphia, who bought hats from Loewe & Co., testified, in his deposition, that the firm was visited by a small committee of men, whom he thought were connected with the hatters' union, who wanted the firm to use its "influence to get Loewe to adopt the union label," or wanted it "to stop using Loewe's goods" (3-p. 483). This firm did not stop buying from the plaintiffs, but

it had to put in a line of union-made goods, for many customers would not buy Loewe hats, therefore, the firm bought less goods from Loewe for awhile (3-p. 484).

The plaintiffs' witness, Edwin F. Keen, who was engaged at Philadelphia in the business of jobbing and retailing hats, when asked whether he had been visited by anyone during the period from 1900 to 1903, suggesting that he should not purchase goods from D. E. Loewe & Co. said (2-p. 470):

> "We were visited, you might say, a couple of times, asking if we could not have D. E. Loewe & Company put labels on, or turn union. I cannot say we were requested right out and out direct from those ones who visited us——"

Later he said (2-p. 471) that he understood that these persons visiting him

> "were only trying to get me to get Loewe to use the label, and as I said at the time we were jobbers, and I thought we had the right to use such goods as we chose, and that it was Mr. Loewe's fight and not my fight, and I would not interfere either one way or the other."

The plaintiffs' witness George B. Wells, a retailer of hats at Philadelphia, who bought goods from Loewe & Co., testified that he was visited in the early part of 1903 by representatives of local labor unions who suggested that, as he had shown himself a friend of organized labor, he ought to be willing to write to Mr. Loewe requesting him to unionize his factory (2-p. 480), and that an employee of his named Birch, who appeared to be a union man and practically acted as a messenger of the officers of the hatters' union, urged

him to allow him, Birch, to report to the officers that he would cease using Loewe's hats. When he refused that on at least one occasion, probably more, Birch asked to be allowed at least to report that he would reduce the quantity that he was using to as few as possible to meet his demands. Among other things Birch pleaded that he wanted to square himself as doing all he could in the matter (2-p. 481). When the witness was asked (3-p. 481), "Did you ever receive any intimations from any of these people what would be the consequence if you failed to comply with this request", he answered (3-p. 482):

> "Birch said on a number of occasions that it would be to my interest to cease using Loewe's goods, that it was for my sake as well as his own, that he wanted me to take that stand."

It does not appear that Wells ever ceased dealing with the plaintiffs or even reduced his purchases from them; on the contrary, it appears that at the time of testifying he had dealt with the plaintiffs ten or fifteen years—certainly not less than ten (2-p. 479).

Effect of Increased Demand for Label.—There is also an abundance of testimony to show that some of these dealers, instead of being influenced to stop dealing with the plaintiffs by threats of a boycott, or the fear of a boycott, stopped buying the Loewe goods because there was an increased demand for goods bearing the union label.

Loewe testified that this was the reason given by a number of his customers for not placing their orders or for reducing the amount of their purchases. He testified that Wechsler, Laufer & Co., a New York jobbing firm, reduced their purchases in the fall of 1902 because their "customers had

been visited and that now they demanded the label" (4-p. 1033). When he asked Mr. Asch, of the firm of J. R. Asch & Sons, for orders, in the fall of 1902, Mr. Asch told him that "he could not use as many goods as he had before; his customers refused to buy them unless they had the label" (4-pp. 1033, 1155). J. R. Worthley, whom Loewe talked with in the fall of 1902 (4-pp. 1031, 1032), said he "wouldn't be able to buy as many goods" from the plaintiffs "because his customers demanded the union label" (4-p. 1157). Mr. Denzer, of the New York firm of Denzer, Goodhart & Scheuer, in giving the reasons for reducing his purchases, said in substance (4-p. 1031): "My customers have been visited by agents, and now the customers demand the label in their goods; that is, a great many of them." And a New York customer of his firm named J. R. Gilleaudeau, whom Loewe approached for an order in the fall of 1902 (4-p. 1033), "told the same story; that the reason he was not buying so many goods was that his customers demanded the union label" (4-p. 1156).

The buyer for the wholesales firm of J. J. Seeds & Co., of Philadelphia, testified that in order to be in a position to supply merchandise to customers the firm had to put in a line of union-made goods; many customers would not buy Loewe hats (3-p. 484).

The firm of Eli Keen's Sons, engaged in jobbing and retailing hats at Philadelphia, received letters from the Pennsylvania State Federation of Labor, conveying the information that application had been made to the Federation to have the firm placed on the "we don't patronize list" of the organization, and suggesting that it would be well to avoid this by granting the hat finishers of Philadelphia "the favor of discontinuing busi-

ness with Loewe & Co. until the disagreement between them and the union had been overcome" (2-pp. 476, 477). But that this had no coercive effect upon the firm appears from the testimony of one of its members to the effect that while the firm did not continue to push the Loewe hats as formerly, there was no reason for not pushing them other "than the demand of goods from the customers, they did not want Loewe's goods, that is the way we understood it" (2-p. 478). And while this firm reduced its purchases, it never ceased buying, from Loewe & Co. (2-pp. 469, 470) or ceased selling Loewe goods to those who wanted them; "the goods", as the witness said, "were there" (2-p. 471).

John Reding, of the Moore, Smith Company, a wholesale dealer in hats and caps at Boston, when asked why he reduced his purchases from Loewe & Co. said (3-p. 556): "Well, I have a very good New England trade in the large manufacturing towns, and I know that the labor unions had reported—had been to some of the customers and stated that unless we stopped selling Loewe's goods those same people would be boycotted in the town where they live. We couldn't afford to have anything of that kind happen, and rather than do that I would sell some other goods". What this witness meant by customers being "boycotted" is explained by the part of his cross-examination which follows (3-pp. 556, 557):

"Q. They simply requested you, didn't they not to handle the goods? A. Well, you can put it any way you want.

"Q. Well, was it any more than a request? A. Well, I can't say it was a threat.

"Q. But isn't it true, Mr. Reding, that you knew that the labor sentiment in those Mas-

sachusetts towns and the manufacturing towns of Connecticut was very strong? A. Yes.

"Q. And that you retailers would have hard work to working off non-union goods in Massachusetts and the Connecticut towns? A. Yes.

"Q. And you knew also, as a business proposition, that it would be better to handle the union goods; Mr. Loewe's goods weren't sold distinctively as Mr. Loewe's goods? A. Not particularly.

"Q. He went under the class of non-union goods? A. Yes.

"Q. And in these sections of Massachusetts and the manufacturing centers of Connecticut there was a great call for union label goods; is that true? A. There was in the manufacturing towns; I don't deny that at all."

Mr. Loewe's goods not being "sold distinctly as Mr. Loewe's goods", it appears that the so-called boycott which the witness had in mind was not merely a rejection of Loewe goods; it was nothing more or less than an insistance upon goods bearing the union label.

All of this testimony, except that brought out on the cross-examination of the last-mentioned witness, John Reding, was put before the jury by the counsel for the plaintiffs, evidently on the theory that the adoption and the advertising of the union label, and the persuading of members of labor unions and others, by lawful means and without threats or coercion of any kind, to buy only those goods which bear the label, constitutes an illegal boycott and makes those who engage in it liable in triple damages, under Section 7 of the Anti-Trust Act, to anyone whose interstate trade may thereby be injuriously affected.

Of course, if this is the law, then each and all of the nine thousand or more persons who were members of unions affiliated with the United Hatters at the time of the alleged conspiracy, no matter how far removed from the field of the controversy they may have lived or how impossible it may have been for them to know about it, are liable in threefold damages to the plaintiffs for any injury done to their interstate commerce by the adoption and advertising of the hatters' union label.

And, not only are they liable in a civil action under Section 7, but they are also liable criminally under Sections 1 and 2 of the Anti-Trust Act; for, if particular acts create a liability for damages under Section 7 of the act, the same acts must create a criminal liability under Sections 1 and 2; the procedure and the mode and sufficiency of the proof would differ accordingly as an action for a violation of this law is civil or criminal, but the acts which constitute a violation must be the same in either case. The Sherman Act is primarily a criminal statute. As was said by Mr. Justice Holmes, in the Northern Securities Co. case, 193 U. S., pp. 401, 402:

> "The statute of which we have to find the meaning is a criminal statute. The two sections on which the Government relies both make certain acts crimes. That is their immediate purpose and that is what they say. It is vain to insist that this is not a criminal proceeding. The words cannot be read one way in a suit which is to end in fine and imprisonment and another way in one which seeks an injunction. The construction which is adopted in this case must be adopted in one of the other sort. I am no friend of artificial interpretations because a statute is of one kind rather than another, but all agree that before a statute is to be taken to punish

that which always has been lawful it must express its intent in clear words. So I say we must read the words before us as if the question were whether two small exporting grocers should go to jail."

If the theory of counsel for the plaintiffs is in accordance with the law, then, too, the union label laws of forty-one or more states and territories are set at naught.

But we apprehend that this theory, which was necessarily accepted by the trial court in refusing the instructions requested in regard to the label, is not in accordance with the law. The evidence which we have just reviewed not only fails to prove, but tends to negative, the allegations of the complaint that there was a coercive boycott and that the label was employed as an instrument for carrrying on this coercive boycott, and the jury should, therefore, have been given the instructions which were refused.

Withdrawal of, and Threats to Withdraw, Label.—The Empire Hat Company, which did a manufacturing and jobbing business at Danbury, and was for a time entitled to use the union label, had the label taken away from it in 1902 because it did not handle union hats exclusively, but bought some hats from Loewe & Co. (3-pp. 938 to 943).

The corporation known as Longley, Lowe & Alexander, which dealt in hats at wholesale, had a factory at Chicago wherein union labor was employed (3-p. 548) and was entitled to use the label, but, when it was threatened with the withdrawal of the label by representatives of the hatters' union (3 pp. 545, 547, 548), it ceased handling the goods of the plaintiffs (3-p. 552). There is some testimony by John W. Lowe, secretary and treasurer of this company, that two labor repre-

sentatives threatened to tie up the factory if the company would not agree to discontinue buying goods from Loewe & Company, but it is quite evident from the testimony of this witness, when read as a whole, that the threat actually made was to take the label away from the factory (3-pp. 545, 546) which might operate to tie it up.

The union label, according to the "label laws" of the United Hatters, is only granted to factories which employ union labor exclusively. It is also provided that "any manufacturer using hats, any part of which was made in a foul shop, shall not be entitled to the use of the label" (2-p. 127), and there is nothing in the record to show that it was not customary for the officers of the United Hatters to withdraw the label from factories which mixed non-union with their union-made goods.

Surely the hatters' union is not bound to grant its label to anybody and everybody, or having granted the label, is not powerless to recall it when it is misused or the possibility that it will be misused arises. If so, what is the use of the label? In *Saulsberry* v. *Coopers' International Union*, 147 Ky. 170, it was held that a manufacturer cannot enjoin a labor union from removing its stamp from his shop on failure to renew a contract for labor with the union.

Tracing Shipments from the Loewe Factory.—The plaintiffs' witness William J. Brady, who was shipping clerk for Loewe & Co. at the time of the strike, testified that, after he left the factory, he was employed by Mr. Moffit partly for the purpose of finding out where the firm was shipping its goods (3-pp. 711 to 715). And there is other testimony in the record tending to show that Mr. Moffit, the advertising agents under his con-

trol and the officers of local unions in some places, other than in Danbury, Norwalk and Bethel where the defendants in this case lived, had knowledge of shipments from the factory to particular dealers (3-pp. 541, 553, 554, 584, 924).

There is no question but that this tracing of shipments was practiced. Martin Lawlor testified that it had always been the practice of the hatters' organization to know where union hats were sold, and to know where non-union hats were sold, and the agents of the organization would try to put the label where most non-union hats were being sold (5-p. 1866).

But there is nothing wrong in this. It is consistent with the accepted practices of the business world. It might be employed as one of the means of inflicting an illegal injury, as would be the case if the advertising agents and other labor representatives, guided by the information thus obtained, should visit the consignees and by threats or intimidation coerce them into a withdrawal of patronage from the consignor. But in the absence of some form of coercion, in the legal sense of the term, this practice of tracing shipments from the Loewe factory as an aid to the more effective discouragement of the patronage of Loewe goods was entirely legitimate. And the fact that this means of securing information was employed by Mr. Moffitt could be of no assistance to the jury whatever in determining the question whether there was, or was not, a coercive boycott. But the jury, left to determine the issues in the case without any proper guidance from the court, could not know this; the jury could not even know that the plaintiffs were required to prove coercion.

So far as the record shows, the employment of Brady to do this sort of work in connection with

the Loewe controversy was not known to any of the defendants in this case. Brady testified, and his is the only testimony which bears upon the matter, that he did not tell anybody in Bethel, Norwalk or Danbury about the nature of his work. He said that people in Danbury knew that he was employed at Moffitt's headquarters in Danbury, but, so far as he knew, they knew nothing of the character of his work (3-pp. 715, 717, 718). The defendant Lawlor may have known, but it is not certain that he did (3-pp. 713, 715, 716, 717).

Dealers Buying Loewe Goods From Triest & Co.

So far we have been dealing with hat sellers and clothing merchants who bought their goods directly from Loewe & Co. But there were a number of merchants, chiefly located in California, Oregon and Washington, who bought the Loewe hats from Triest & Co.

Triest & Co.—Triest & Co. was a corporation, having its place of business at San Francisco, which dealt in the Loewe goods very extensively. As we shall see later, more than 70 per cent. of its hats were of the non-union Loewe make, and these were the hats which had the largest sale where labor unions were especially strong. The company may have had some union-made hats to sell, but there is no definite information in the record as to this. The company tried to force the sale of these hats even in places, such as San Francisco and Oakland, where labor unions were especially strong. Martin Triest, as we shall see, testified that "after the boycott commenced" his company tried harder than ever to dispose of

the Loewe hats "especially in San Francisco and Oakland, where this grade of hat was used mostly."

This company, through its salesmen, even represented that its non-union Loewe goods were made by union labor. D. B. Barron & Co., of Murray, Utah, a union town, were told by a representative of Triest & Co., according to a letter dated August 28, 1903, which the firm sent to Triest & Co., that the Triest hats were union-made, and, on learning from some labor representative or organization that this was not so, cancelled an order and stopped dealing with the company (3-p. 869). Aaron Fox, of Troutdale, Oregon, had a similar experience (3-p. 860).

There is no question at all but that Triest & Co. had trouble in disposing of its Loewe goods, but this was not because of any coercive boycott of Loewe & Co., nor because of any coercive boycott of Triest & Co.; it was simply and solely because of the insistance by union men upon goods bearing the union label. If this is a boycott then there was a boycott and a fairly effective boycott. Let us see about this.

Threats to Boycott and Fear of Boycott.—There is testimony in the record that some of the merchants who bought Loewe hats from Triest & Co., were either threatened with a boycott, or feared that they would be boycotted, unless they stopped dealing in hats bought from that company.

Most of this testimony comes from Martin Triest, the manager and treasurer of Triest & Co., which, as we shall see, tried to force the sale of non-union hats where they were not wanted, and from Frank Triest, Michael Savannah and Benjamin Rosenthal, who were employed as traveling salesmen by Triest & Co. We shall first give the

substance of the testimony of these witnesses, paying some attention to the value of the testimony of the witnesses, but none to the hearsay character of their testimony, which will be considered later when we come to treat of the exceptions to the admission of evidence. See, *infra*, pp. 206-210.

Martin Triest testified generally that the customers of Triest & Co. in San Francisco and Oakland stopped buying "on account of the boycott" (3-p. 832), and that the failure of his company to sell the better grade of goods bought from Loewe & Co. was due to the boycott (3-pp. 830, 831). He also testified that A. J. Cappuro & Co., of Stockton, California, was afraid of being boycotted if he continued to buy (3-p. 840) and that J. L. Lesser would not buy goods for his Tacoma store because "he was afraid of being boycotted himself" (3-p. 849).

Frank Triest testified that Cappuro, of Stockton, stopped dealing with the company because of receiving notices from the unions, and being called on by union men asking him to desist buying from Triest & Co., or threatening him with a boycott (3-p. 661), that S. Dannenbaum & Co., of Vallejo, would not buy from him for the same reason (3-p. 661) and that the I.X.L. Clothing Store, of Stockton, stopped dealing with Triest & Co. for awhile because the managers had received notices from the unions and "they were afraid of a boycott themselves" (3-p. 658).

Michael Savannah testified that A. Jonas, of Oakland, California, told him "that he was afraid to buy on account of the boycott" (3-p. 645) and that W. Smith of the same place refused to buy because "he was intimidated by the labor representative on account of the boycott; he even went so far as to state that he would gladly buy if he were allowed to" (3-pp. 643, 644).

Benjamin Rosenthal testified that the Lion Clothing Co., of Tacoma, Washington, gave as a reason for refusing to buy that they were "afraid of the boycott" (3-p. 653), that the buyer for A. Danziger & Co., of the same place, said that Agent Kelly had called on him and told him not to buy of the witness, that Triest & Co. were boycotted and that he would be boycotted if he bought (3-p. 651), that H. H. Wessels, of Pendleton, Oregon, gave as a reason for not buying goods that they were afraid of being boycotted and they were getting circulars (3-pp. 648, 649) and that Herman Wise, of Astoria, Oregon, cancelled an order which he had placed, giving as his reason for doing so that Agent Hennelly was there and he would be boycotted if he handled the goods (3-pp. 651, 652).

Now let us put ourselves in the place of the jury and see what weight the jury would have been likely to give this testimony had it understood that the boycott which the plaintiffs had to prove was a coercive boycott. It should be understood that we are not necessarily about to attack the credibility of these witnesses; it is enough to show the worthlessness of this testimony as to threats of a boycott and fears of a boycott, unaccompanied by any explanation of the sense in which the word "boycott" was employed, to establish the allegations of the complaint.

Frank Triest, as we have seen, testified that the I.X.L. Clothing Store stopped dealing with Triest & Co., because the managers "were afraid of a boycott themselves". But Alexander Briones, a clerk in this store who had the power to purchase goods (3-p. 813), gave a different reason. He said that the reason why the concern for which he worked stopped buying was that Triest & Co. were carrying goods made by an unfair house.

He learned that fact through the union to which he belonged (3-p. 814) and, without directions from members of the firm, he ceased buying from Triest & Co., because that firm continued to carry the Loewe hats. He followed the instructions of the unions because they were all banded together to help one another (3-pp. 815, 816).

Michael Savannah, as we have seen, testified that A. Jonas told him "that he was afraid to buy on account of the boycott". But Mr. Jonas himself testified that all the employees in his place of business were union men (3-p. 785) and gave as the reason why his business with Triest & Co. dropped off in 1904 and the years following was that they received at that time some letters from the hatters' union to the effect that Triest & Co. "were carrying non-union goods, and the boys in the store more or less, I presume, felt a little lukewarm as regards to Triest & Co., and handling their goods" (3-pp. 785, 786). He testified that he received a visit from a man whom he thought was Agent Kelly of the Hatters' Union (3-p. 786), and, when asked what this man had to say to him, answered (3-p. 787): "I don't know whether he had much to say; only just a couple of days before that we received a notice and he called our attention to the notice which we received from the Hatters' Union".

Savannah's testimony that W. Smith gave as his reasons for not buying "that he was intimidated by the labor representative on account of the boycott" and that "he even went so far as to state that he would gladly buy if he were allowed to" is offset by the testimony of William Smith himself, who said, on cross-examination, that there were a good many union men among his customers and that the reason why he ceased

dealing with Triest & Co. was to keep the trade of these union customers (3-p. 780).

Benjamin Rosenthal, as we have seen, testified that Herman Wise, of Astoria, Oregon, cancelled an order and gave as a reason for doing so that Agent Hennelly was there and he would be boycotted if he handled the goods. But Herman Wise testified that when he learned that Triest & Co. sold certain hats which were on the unfair list of labor unions he did not want to deal in them, because Astoria was a strong union town; the union people were the people he had to sell hats to and he did not want to lose any trade (3-pp. 930, 931). Wise accordingly wrote a letter to Triest & Co., which is Plaintiff's Exhibit No. 102, giving this as his reason for not continuing to buy from the firm (3-pp. 861, 862).

The boycott, then, which these witnesses had in mind may have been simply the withdrawal of their patronage by members of labor unions from the non-union goods of Loewe which were sold by Triest. And this may be the boycott which the uninstructed jury found to have been established by the evidence.

A few of the customers of Triest & Co. testified that they stopped dealing with the company, or discontinued dealing with it for a while, either because they were threatened with a boycott or because they feared a boycott. These witnesses are as follows: M. Hart, of San Francisco (3-p. 677), James T. Moran, of Oakland (3-p. 694), and Ellis H. Gross, of Tacoma, Washington (3-p. 904). But it is not possible to know what these witnesses meant by the word boycott, except that Moran certainly meant that he would lose his union trade (3-pp. 696, 697). And it appears that Gross did not stop buying hats from Triest & Co., but bought most and sometimes all of his hats from them (3-pp. 902, 905).

Employment of Persuasive Means.—To counteract this vague testimony about boycotts, threats of boycotts and fear of boycotts, the jury had before it testimony by witnesses for the plaintiffs that the advertising agents and other labor representatives did not employ threats or other forms of coercion.

The plaintiffs' witness, La Touche, who was a dealer in hats at Los Angeles, and bought Loewe hats from Triest & Co., testified that he was called upon by Mr. Hennelly who requested him to discontinue buying from Triest & Co. The witness described Mr. Hennelly's method of approaching him as follows (3-p. 885):

> "Well Mr. Hennelly approached me in a very gentlemanly, smooth and diplomatic manner; his language was rather pleading than threatening; he seemed to be pleading my side of the case, saying that it would be to my interests to cease trading with Triest & Co., and to handle nothing but union-made things with the union label on them—consequently, should not buy from Triest, for if I did, I would lose a great deal of trade."

The plaintiffs' witness Kohn, who had been manager of the Goldstein Hat Co., of Seattle, which bought hats from Triest & Co., when asked whether at any time, during his connection with Goldstein Hat Co., he had been asked to discontinue the patronage of Triest & Co., said (3-p. 896):

> "Yes, I can state that not only from one but different sources that approached me, saying in a sort of a neighborly, friendly way, that it would be a favor to some certain concerns, or we will say unions—and that it would be to my advantage if I would discontinue my trade with them."

C. J. Heeseman, a dealer in hats at Oakland, California (3-p. 699), testified for the plaintiffs that he was called upon twice by Agent Kelly prior to July 30, 1903, and described the conversation between himself and Kelly as follows (3-pp. 702, 703):

> "Mr. Kelly informed us that he represented the Hatters' Association, and that this concern of Loewe & Co. had been placed on the unfair list, and he asked us to discontinue using non-union goods and goods made by this concern, and that Triest & Co. were the selling agents here for them. This is about all the conversation that we had."

Heeseman further testified that the reason he acceded to Agent Kelly's request not to continue buying goods from Triest & Co. was that he did not care to be annoyed by labor organizations and, when asked what annoyance he referred to, said: "No particular annoyance than having a request made to us. We thought it was to our interest to accede to their request" (3-p. 703). Under the date of July 30, 1903, this firm sent a letter to Triest & Co. stating, in part, that the members of the firm were in sympathy with organized labor and felt that the labor unions were their friends and that they were getting a fair share of the patronage of labor (3-p. 704).

Joseph Brown, of the firm of Brown & Mangan, who dealt in hats at Oakland, Cal., and bought from Triest & Co., simply said, in testifying for the plaintiffs, that he was called upon by people who indicated to him that they desired to have him stop patronizing that firm (3-pp. 825, 826).

J. S. Schiller, of Schiller & Murtha, who were engaged in the business of selling hats at San Diego, California, testified, as a witness for the plaintiffs, that he was visited by an eastern repre-

sentative of the hatters' union, who pointed out that the hats which the firm had in stock were not union-made hats, but were Triest & Co. hats, and said that the firm should not deal with Triest & Co. When asked whether this man mentioned the firm of Loewe & Co., the witness said (3-p. 883):

> "He said something about non-union, and that some of the factories there not being satisfactory—and one thing and another—I don't remember exactly. The point he brought up was that the hat he took up was a non-union hat and not being satisfactory; and he mentioned Triest & Co. and his dealings with them, and on account of that I should not deal with them."

Sympathy of Dealers with Labor Unions.—Heeseman, to whom we have just referred, was not the only dealer who was in sympathy with labor unions and, for that reason, stopped dealing in the non-union Loewe hats which were sold by Triest & Co. Martin Triest testified that J. B. Allen "quit us entirely; it was quite natural he would, he being president of the local hatters' union" (3-p. 849).

Desire to Hold Union Trade.—Quite a number of dealers stopped buying the Loewe and other non-union goods from Triest & Co. for the reason that they wished to hold the trade of those who belonged to labor unions, and, to do this, they had to have goods bearing the union label. But was the action of these dealers due to the existence of a coercive boycott or to the wide-spread and vigorous advocacy of the union label? There is little evidence in the record, if, indeed, there is any, to establish the existence of a coercive boycott, while it is established by the evidence for the plaintiffs beyond question that the union label had been vigorously advertised and endorsed

by labor unions so that members of labor unions very extensively, when buying hats or other goods, insisted upon goods bearing the label and would buy no other. Hence the jury could reasonably have found, even if it must not necessarily have found, that the action of these dealers was due to this known cause, the popularity of the label, rather than to this subject of conjecture, a coercive boycott.

There is a good deal of this testimony in the record, all of which is by witnesses for the plaintiffs.

Albert Elkus, a merchant of Sacramento who dealt in hats, testified, in effect, that the reason he stopped buying hats from Triest & Co., was that the firm was handling a non-union hat and there was a prejudice against non-union goods at that time (3-pp. 798, 799). He also said, in effect, that he did not buy of Triest & Co., the union goods which they may have had, because he had to go elsewhere for some union goods (evidently meaning goods of the same class as Loewe's) and if he split his orders between two houses the orders would be so small that he thought it better to give his trade to one house so as to make it worth while to that one house (3-p. 798).

J. S. Schiller, of Schiller & Murtha, dealers in hats at San Diego, California, testified that, after receiving a circular relating to Triest & Co. from the San Francisco Labor Council, the firm cancelled an order with Triest & Co., because they were a little afraid that, unless they did so, they would not get as much union trade; the firm bought some union hats from Triest & Co. after that, but bought a few union hats which that company did not have elsewhere (3-p. 884).

D. B. Barron & Co., of Murray, Utah, according to the testimony of Martin Triest, cancelled an

order and ceased dealing with Triest & Co. because, as stated in a letter dated August 28, 1903, they were in a union town and could not handle hats without the label. It also appeared from this letter that a representative of Triest & Co. had told this firm that the Triest hats were union-made and that this falsehood had been exposed by some labor organization or representative (3-p. 869).

Aaron Fox, who conducted a general merchandise business at Troutdale, Oregon, and sold hats, wrote a letter under the date of September 22, 1903, to Triest & Co., informing them that he could not use a shipment of hats received from them for the reason the hats were not union goods, that being one of the conditions on which he had bought the goods (3-pp. 860, 926). He testified that every employee in the town was a union man and he catered to the trade of union men and did not want to lose their trade (3-p. 927).

Henry S. Lillager, who had dealt in hats at Seattle, said that, while he thought well of the non-union hat sold by Triest & Co., his firm was "unable to sell it on account that people would not have it on account of not having a union label" (3-p. 912).

Herman Summerfield, who had been in business at San Francisco, testified that, when he was called upon by union men in reference to Triest & Co. from whom he bought goods he decided that he would have to cease trading with Triest & Co. He said: "We had a good working class trade and I had to stay with them." When asked, "What made you think you would lose the working class trade?" he said:

> "Because I have had for years and years the best trade from the working class trade, and I knew if we did not side in with as to the

label and so on it was a detriment to the store; besides I had union cards in my window and naturally carried most all union goods (3-p. 805).

There is testimony by some hat sellers, who were buying the non-union Loewe hats from Triest & Co., that they were told by labor representatives that it would be safer not to continue doing so, they would lose the patronage of laboring man and that, if they continued buying these goods, their business would be injured, it would be reported to the unions and, in a few instances, that their names would be posted in the unions. References to this testimony follow: Herman Summerfield, of San Francisco (3-p. 805); Nathan Schlussel, a clothier at Astoria, Oregon (3-pp. 917, 923); Herman Welisch, of San Francisco (3-pp. 670-671); Charles G. Meussdorffer, of the firm of A. K. Meussdorffer & Son, San Francisco (3-pp. 672, 673); H. Kinspel, of Bakersfield, California (3-pp. 679 to 681); Nathan Siegel, of Los Angeles (3-pp. 887, 888); Henry S. Lillager, of Seattle (3-pp. 913, 915). Benjamin Rosenthal, the traveling salesman for Triest & Co., (3-p. 648) mentioned above (*supra*, pp. 75, 77), testified that McCormick, of Tacoma, said that he had been getting circulars, had been visited by members or a member of a local union and he did not want to get into trouble with the unions there; Tacoma was a strong union town and he did not want to take any chances (3 pp. 652, 653). The special circumstances surrounding McCormick will be shown later.

If members of labor unions may not only lawfully agree not to buy non-union goods or the products of a particular non-union factory, but may also, by persuasion, induce all who are in

sympathy with labor unions to do likewise, it follows that they may, by persuasion, induce retailers or jobbers to refrain from handling non-union products or the products of a particular non-union manufacturer. And representing to the retailer or jobber that union men, and those in sympathy with labor organization, do not buy goods which are not made by union men, or the goods of a particular non-union manufacturer whom they regard as unfair to union labor, does not amount to such coercion as will make their conduct an unlawful boycott.

If, as we contend, members of labor unions may lawfully do these things, it is only fair that they should acquaint dealers in non-union goods with the attitude of union men and women, their friends and sympathizers. And it is also their right to inform each other, and to inform anyone who may be interested, as to what merchants are, and what are not, selling non-union goods. There is no element of coercion in this, and the jury could not properly find that there is. But the jury, as we know, knew nothing of coercion nor of the necessity for proof of coercion to find the defendants liable.

Whether So-called Boycotts Limited to Non-Union Goods.—The plaintiffs introduced some evidence tending to show that the so-called boycott of Triest & Co. was not limited to the discouragement of the buying of the non-union goods of the plaintiffs sold by that company, but extended to its union goods as well.

A few retailers of hats testified that they were requested, or understood that they were requested, by labor representatives who called upon them, not to deal in any of the goods, not even union-made goods, sold by Triest & Co. These witnesses

are as follows: Kinspel, of Bakersfield, California (3-p. 679); Herman Summerfield, of San Francisco (3-p. 810); Ellis H. Gross, of Tacoma (3-p. 904); Henry S. Lillager (3-pp. 914, 915).

Nathan Schlussel testified that Agent Hennelly, in requesting him not to buy hats from Triest & Co., did not mention anything about limiting his purchases to union goods only—just not to deal with them at all (3-p. 923).

Charles G. Meussdorffer, of San Francisco, testified that two and three months after he was called upon in the Fall of 1903 by a union representative (3-p. 675), whose name, he thought, was Wisler (3-p. 673), he had to stop buying from Triest & Co. and only bought a few goods from them (3-pp. 674, 675); he stopped purchasing union hats as well as non-union hats (3-p. 676).

C. J. Heeseman, of Oakland, Cal. testified that he understood that Agent Kelly's request to him was a request not to deal with Triest & Co. at all, but he also testified, when asked whether he gleaned from the conversation with Kelly whether his desires did not include a request that he should cease patronizing the union goods of Triest & Co., that it was so long ago that he really could not remember whether he said that or not (3-pp. 702, 703).

Aaron Fox, of Troutdale, Oregon, understood that the local unions objected to his selling even union hats bought from Triest & Co. (3-pp. 927-928), but it does not appear that he was so told.

On the other hand, many retailers evidently did not so understand the situation, as is shown by the general tenor of their testimony or by the fact that, while they stopped buying non-union goods from Triest & Co., they continued to buy union goods.

Albert Elkus, of Sacramento, evidently did not understand that there was any desire on the part of the labor representatives to prevent him from selling union hats brought of Triest & Co. (3-p. 798).

Schiller & Murtha, of San Diego, continued to buy union hats from Triest & Co., but bought elsewhere some union goods that the company did not have (3-p. 884). Schiller testified that the request made of him by some eastern representative of the hatters' union not to deal with Triest & Co. was not limited to the goods sold by that company but extended to the goods of all non-union manufacturers (3-p. 882).

That many of the customers of this company merely stopped buying non-union goods but continued to buy union goods is also shown by the testimony of Martin Triest, the manager and treasurer of the company (3-p. 579), who testified that at the time of the alleged boycott and since, customers, in many instances, would not buy anything but union-label goods, whereas before they did not care (3-p. 829). He said that the M. J. Keller Company, of Oakland, right after the time of the boycott, July, 1903, "changed from non-union goods to absolutely nothing but union goods" (3-p. 836). He also testified that other customers would only buy union goods, mentioning the following: M. Hart of San Francisco (3-pp. 843, 844); Kahn Bros. & McGiffin (3-p. 846); S. Selig & Brother of San Francisco (3-p. 847); J. L. Lesser, for his Tacoma store, he also having one at San Francisco (3-p. 848); Schiller & Murtha of San Diego (3-p. 854); Lion Clothing Company, of Oakland (3-p. 864); Brown & Mangan, of Oakland (3-p. 866); Lillager & Barkman, of Seattle, Washington (3-p. 867).

If there was, for a time, an impression among some of the retailers that the members of labor unions and their friends would withhold their patronage from all goods bought from Triest & Company, even non-union goods, this impression did not last.

A number of the customers of Triest & Co., according to the testimony of Martin Triest, stopped dealing with the company entirely for awhile after the so-called boycott which began in July, 1903, and when they began buying again bought only union-made goods which bore the union label: John A. McCormick, of Oakland, stopped dealing with Triest & Co. for a while and then bought only union goods (3-p. 838); Kahn Brothers & McGiffin, of San Francisco, quit buying and then bought again but bought only union goods (3-pp. 839, 846); Herman Summerfield, of San Francisco, "quit us for awhile, and when he came back he bought absolutely nothing but union-made goods" (3-p. 845); Pauson & Co., of San Francisco, "quit and bought again and quit again; but after the visit of Mr. Kelly in July, 1903, he would buy nothing but union goods" (3-p. 850); Schiller & Murtha, of San Diego, wrote a letter stating that they wanted only union goods (3-p. 854). Herman Wise, of Astoria, California, first of all "cancelled an order which he had placed", then, "when he did start in buying he demanded only union label goods, while before the boycott he did not care whether they were union or non-union" (3-p. 843). "When", the witness later said, "I persuaded him to again patronize Triest & Co. he told me that it was with the positive understanding that every hat that would come into his house would have union labels only" (3-p. 862).

And it is by no means certain that this complete withdrawal of patronage from Triest & Co. for awhile was due to the belief by the retailers that they would lose the patronage of organized labor if they bought from the company at all. It may have been due to a number of quite different causes.

Among these causes may be mentioned the fact that Triest & Co., for a time, was not in a position to supply the growing demand for union-label goods in the communities in which labor was well organized; not only were the wares of the company mostly non-union but more than 70 per cent. were of the unpopular Loewe make.

Martin Triest testified that, in 1903 before the beginning of the boycott, the proportion of Loewe goods sold by his company to the San Francisco and Oakland trade was more than 70 per cent. (3-pp. 834, 835, 837, 865). He repeated this testimony when asked about the trade of particular customers (3-pp. 836, 837, 838, 842, 843, 844, 845, 846, 847, 851, 852, 865, 866). The balance was in some way, he said, made up of stiff hats, straw hats and soft hats of some other manufacturer than Loewe & Co. (3-p. 835), but it does not appear from the testimony of this or any other witness that, at the time referred to, any of this balance consisted of union-made goods.

And these were the goods which the company attempted to force the sale of in communities where labor organizations were strong.

According to Martin Triest the business of his company suffered mostly from the so-called boycott in the sale of the highest priced goods bought from Loewe & Co. The greatest sales in these goods, he said, were to customers in the larger towns like Oakland and San Francisco, etc. (3-p. 828). "After the boycott commenced" his com-

pany tried harder than ever to dispose of the $13.50 hats manufactured by D. E. Loewe & Co., "especially in San Francisco and Oakland, where this grade of hats was used mostly, without any success whatever" (3-p. 833). This was the better grade of hats (3-pp. 833, 834). Hence the company bought the cheaper grade of goods from Loewe & Co. (3-p. 828) and these were sold "in the small country towns, and in the farming districts where labor unions are not known" (3-p. 830). For the good of the business a union hat had to be substituted for the better grade of hats (3-pp. 833, 834).

This clearly indicated that the real trouble which Triest & Co. had in selling goods after the so-called boycott was in selling non-union goods —Loewe-made goods. That this company still had a market for union goods even there labor unions were strong, is shown by the fact that it substituted a union hat for the Loewe hat that was so unpopular with members of labor unions. And the fact of this substitution indicates that the so-called boycott, in so far as it was effective, was directed against non-union goods, including the non-union goods of Loewe & Co., and not against all, including union-made goods, sold by Triest & Co.

It does not appear how soon after the members of labor unions began withdrawing their patronage from the Triest non-union goods this substitution was made. But as we have seen "after the boycott commenced" the company tried to dispose of the grade of Loewe goods, for which there formerly had been a demand, "harder than ever." Probably the substitution of union goods was not made until there arose a strong and compelling demand for them. In fact, Martin Triest testified that the substitution was made "for the good of

the business " (3-p. 834). Considering the comparatively small amount of union goods that Triest & Co. had to sell and the effort it was making to sell the Loewe goods, it is natural that customers did not buy even union goods of the company for a time.

Another reason why some retailers stopped buying even union hats from Triest & Co. is that the company carried such a small amount of union goods of the grade demanded by the trade, that it was not worth while. Albert Elkus, of Sacramento, who stopped dealing with Triest & Co. for about a year (3-p. 798), when asked, "Why didn't you purchase union goods from them?" said (3-pp. 798, 799):

> "It was this way: if I only had to buy certain things in the union line that they kept, and then go somewhere else and buy the other lines of union goods in this market—you see I was buying hats in the eastern market and buying as I needed in the San Francisco market—if I had to split it between two houses, it was not enough to justify either, as long as there was a feeling against them at that time on account of the union hat to wipe away and to give the trade to one house that would make our trade worth while to them. The young man who I had in charge of my department transferred the account to the one person."

In the case of a few retailers there are special reasons why they stopped buying even union goods from Triest & Co. Martin Triest testified that J. B. Allen "quit us entirely; it was quite natural he would, he being the president of the local hatters' union" (3-p. 849).

The I. X. L. Clothing Store, of Stockton, California, stopped buying from Triest & Co. for

awhile (3-p. 658), not buying even union goods from them (3-p. 815), but this was because a clerk in the store, who had the power to purchase goods (3-p. 813), and who was a union man (3-p. 814), withdrew the patronage without being directed to do so by the members of the firm (3-pp. 815, 816).

John A. McCormick, of San Francisco, testified that he was urged by Agent Kelly to stop buying union as well as non-union hats from Triest & Co. (3-pp. 684, 685). But McCormick's position was quite different from other retailers; he had an order for some hats from one of the local unions for use on Labor Day and he was attempting to fill the order with hats, which he claimed to be union-made but may not have been, bought from Triest & Co. (3-pp. 684, 685). And it appears from the testimony of Martin Triest that, while McCormick may have stopped buying hats from Triest & Co., this was only a temporary condition, for he began buying again and was buying of that company at the time that Triest gave his deposition on Sept. 14, 1908, but limiting his purchases strictly to union goods (3-p. 838). McCormick's position also differed from that of other retailers in that, according to his own testimony, he had promised the labor union not to buy hats from Triest & Co. and broke that promise (3-p. 685). It is quite possible that a jury, if it believed the testimony of this deponent, might conclude that the labor representatives who had talks with him were irritated by his double-dealing, and, if they acted as he testified, they did so because of their natural irritation and not because they were carrying out a pre-arranged conspiracy against Loewe or anyone else.

Actions by Labor Unions Other Than United Hatters.

As we have seen (*supra*, pp. 52 to 56), an important part of the work of the advertising agents of the United Hatters was to appear at the meetings of labor unions throughout the country to make the members acquainted with the union label and urge them to buy no goods which did not bear the label. In doing this they sometimes directed special attention to the non-union Loewe, Stetson, Knox and other hats and, in some places, to the fact that Triest & Co. was extensively selling the Loewe hat. This called forth sympathetic action by some of these unions. We shall now review the evidence showing what was done by these unions, and we shall do this quite thoroughly for the reason that, as appears from what has thus far been said, the jury could have found (and could not reasonably have found otherwise) that nothing had been done by any of the representatives or agents of the United Hatters to further the alleged illegal conspiracy against the plaintiffs, unless it was done by these unions and by the advertising agents in exerting their influence upon these unions.

Calls upon Local Unions by Representatives of Central Bodies.—The central bodies which were visited by the advertising agents in the interest of the union label, sometimes took steps to urge the purchase of union goods only upon members of local unions. The San Francisco Labor Council, according to Secretary Wisler, had committees visit the various local unions, urging them to buy nothing but union-made goods (3-p. 620). And, sometime in the winter of 1902-1903, the Colored Central Labor Union of Richmond, Va., adopted a

resolution instructing the delegates from the local unions in Richmond to see that the members of their respective unions wore none but union-made hats (3-p. 509).

Calls by Committees and Officers on Merchants.—As we have seen, the unions visited by the advertising agents sometimes appointed committees to visit merchants in their locality and tell them about the union label and the attitude of organized labor toward goods not bearing the label (See *supra*, pp. 54, 55). Sometimes such visits were made by officers of these friendly unions. Secretary Wisler, of the San Francisco Labor Council, was instructed by the Council, at a meeting held on August 28, 1903, to call upon firms purchasing hats from Triest & Co. (3-p. 613), and he called upon a number of dealers in San Francisco asking them to discontinue purchasing hats of Triest & Co. (3-pp. 613, 614, 615, 621). He testified that whenever information reached the office of the Council that any hat dealer in the city whom they could reach by a personal visit was purchasing from Triest & Co., or the product of D. E. Loewe & Co., he made visits to the concern (3-p. 621).

Harry A. Knox, who was vice-president of the California State Federation of Labor in 1903, described the work of labor representatives in discouraging the sale of non-union hats as follows (3-p. 605):

> "Going to a big hat store and asking to see different kinds of hats, and if you run across a Danbury hat just go to the proprietor and ask him to kindly quit handling the hats; tell him that you are working for the interest of the working people, and there were certain conditions they wouldn't grant to the workers."

Placing Loewe & Co. and Dealers in Loewe Goods on "Unfair" List.—A number of local unions, central bodies and even state federations, on the Pacific Coast and in Virginia, placed Loewe & Co., and two jobbers, Triest & Co. and T. D. Stokes & Co., who were distributing the Loewe goods, on "unfair" or "we don't patronize" lists.

Sometimes this declaration of unfairness took the form of the declaration of a boycott. For example a resolution establishing a boycott of Triest & Co., was adopted by the San Francisco Labor Council at a meeting held on July 3, 1903 (3-p. 634). This is what the minutes of the meeting shows. But R. I. Wisler, secretary to the council, testified that Triest & Co. was placed on the "we don't patronize" list, the reason for so doing being that the company was the distributor of the products of D. E. Loewe & Co. (3-pp. 617, 618, 622). And the notice of the action of the San Francisco Labor Council declaring Triest & Co. and other firms and corporations unfair, published on July 24, 1903, in a San Francisco labor paper known as the Labor Clarion, says that "the union men and women as friends of organized workers are requested to withdraw their patronage from these concerns" (3-p. 612).

According to the same issue of the Labor Clarion the action of the San Francisco Labor Council was endorsed by the Retail Clerks, Number 432 (3-pp. 613, 614).

The fight of the United Hatters against D. E. Loewe & Co. was endorsed by the Portland Federated Trades Council at a meeting held on August 21, 1903 (3-p. 937).

And, according to a report by Agent Hennelly dated Portland, Oregon, Aug. 21, 1903, and published in the Journal of the United Hatters for

September, 1903, the Oregon State Federation of Labor and the Portland Federated Trades Council had endorsed the action of the California State Federation of Labor and the San Francisco Labor Council in declaring Triest & Co. unfair (3-p. 578).

Sometime in the early part of December, 1902, T. D. Stokes & Co., of Richmond, Virginia, a firm which dealt in the Loewe hats very extensively, was placed on the unfair list by the Central Labor Union of that city (3-p. 508).

The Loewe hat, known as the Madison, seems to have been placed on the unfair list by the Colored Central Labor Union of Richmond, Va., sometime in the winter of 1902 (3-pp. 508, 509).

The record shows that similar action was taken by other unions several months after the commencement of this suit, which was on September 14, 1903 (3-p. 592). Thus it appears that a resolution declaring Triest & Co., unfair was unanimously adopted at a regular convention of the California State Federation of Labor held at Fresno, January 4th to 9th, 1904 (3-pp. 599, 600). And in the Labor Clarion for Jan. 29th, 1904, under the head of "Cloak Makers", it is stated that a "communication was received from the State Federation of Labor relative to the boycott of Triest & Co., jobbers, who persist in handling unfair hats," and that "the union responded by pledging its members to withhold patronage from firms that continued to deal with Triest & Co." (3-pp. 615, 616).

Distribution of Circulars and Letters.—These unions also distributed circulars and letters calling attention to the fact that Loewe & Co., and Trieste & Co., were regarded as unfair to organized labor, requesting members and friends of the unions not to buy, and merchants not to deal in,

the non-union goods of these concerns, and informing the merchants of the attitude of organized labor toward these and other goods not bearing the union label.

Circulars and Letters Issued by the San Francisco Labor Council.—The San Francisco Labor Council, which was made up of delegates from about 130 unions (3-p. 610), issued a number of circulars and letters as follows:

Under the date of July 3, 1903, there was issued a circular which appears in the record as Plaintiffs' Exhibit No. 83 (3-pp. 591, 592, 682, 683).

It appears that copies of this circular were received by Herman Welisch, of San Francisco (3-p. 670), John A. McCormick, of San Francisco (3-p. 682), the I. X. L. Clothing Store of Stockton, California (3-pp. 814, 815), Louis Kline & Co., of San Francisco (3-pp. 818, 819), Schiller & Murtha, of San Diego, California (3-pp. 883, 884), T. B. La Touche, of Los Angeles (3-p. 885, 886) and Nathan Siegel, of Los Angeles (3-p. 888). And Martin Triest testified that he received letters from a number of the customers of his company enclosing copies of this circular or of circulars of the same general type (3-pp. 590, 591, 876, 877, 878).

This circular reads as follows (3-pp. 591, 592, 682, 683, 815):

> "To whom it may concern:
>
> "At a meeting of the San Francisco Labor Council, held on the above date, the hat jobbing concern known as Triest & Co., 116 Sansome Street, San Francisco, was declared unfair for persistently patronizing the unfair hats and manufacturing concern of D. E. Loewe & Company, Danbury, Connecticut, where the union hatters have been on strike

for union conditions since August 20, 1902. Triest & Co. will be retained on the unfair list as long as they handle the products of this unfair hat manufacturing Co.

Union men do not usually patronize retail stores who buy from unfair jobbing houses or manufacturers. Under these circumstances all friends of organized labor and those desiring the patronage of organized workers, will not buy goods from Triest & Co., 116 Sansome Street, San Francisco."

A circular letter, dated July 14, 1903, and signed by the president, G. B. Benham, and the secretary, T. E. Zant, of the San Francisco Labor Council, was, according to the testimony of Martin Triest, received by his company (3-p. 871). This letter, which constitutes Plaintiffs' Exhibit No. 106, reads as follows (3-p. 871):

"We beg leave to call your attention to the following products which are on the unfair list of the American Federation of Labor. We do this in order that you refrain from handling these goods as the patronage of the firms named below is taken by the organized workers as an evidence of a desire to patronize those who are opposed to the interests of organized labor. The declaration of unfairness regarding the firms mentioned is fully sanctioned and will be supported to the fullest degree by the San Francisco Labor Council. Trusting you will be able to avoid the handling of these goods in the future, we are," etc.

Then follows a list of firms and companies referred to as being on the unfair list of the American Federation of Labor, including Loewe & Co. and Triest & Co. (3-p. 872).

The statement in this letter that the Loewe and Triest companies were on the unfair list of the

American Federation of Labor is not correct; neither of these companies has ever been placed on the "unfair" or "we don't patronize" list of the American Federation of Labor.

A circular letter, dated Sept. 14, 1903, and written by R. I. Wisler, Secretary to the San Francisco Labor Council, was sent to A. K. Meussdorfer and to H. Summerfield, both of San Francisco (3-pp. 618, 619).

This letter, which is Plaintiffs' Exhibit No. 73, reads as follows (3-p. 618):

> "Some time ago I called on you with reference to a transfer of your patronage to some other concern besides Triest & Company, jobbers in hats, and was led to believe by the answer given me at that time that you would so transfer your patronage; information has reached this office that since my visit goods have been purchased by you from Triest & Company. I again urge that you discontinue your patronage of the above firm in order that the San Francisco Labor Council may not be placed in a position of stating to the purchasing public that your concern is not acting fairly toward organized labor".

Letters Issued by Alameda Federated Trades Council.—A couple of letters were written to a few merchants of Oakland, California, by the secretaries of the Alameda Federated Trades Council. This Council, which had its headquarters in Oakland, seems to have been composed of delegates from various local unions in Alameda County representing 30 different trades or classes of workers, but no hatters (3-pp. 662-663).

A letter dated Aug. 4, 1903, which constitutes Plaintiffs' Exhibit No. 80, was written by Secretary P. B. Preble to a Mr. Bernstein, requesting him to appear before the executive committee and show why his store should not be placed on the "unfair list" on account of complaints made by the International Hatters' Union (3-p. 663).

Another letter, headed "Headquarters Alameda Federated Trades Council," dated at Oakland, Cal., September 3, 1903, and signed "Charles W. Petry, secretary," was received by M. J. Keller (3-p. 811), and by Brown & Mangan (3-p. 825), both of Oakland.

This letter, which is Plaintiffs' Exhibit No. 81, simply conveys the information that organized labor had concluded to stop buying hats coming from Triest & Co. It is as follows (3-p. 666):

> "Dear Sir: The firm known as Triest & Co. of San Francisco, Calif., is considered unfair by organized labor, who have concluded to cease purchasing hats coming from said firm. For further information we would be pleased to have you attend a meeting of our Executive Board to be held September 9th, 8 P. M., 453 Eighth Street."

Keller never appeared before the council in answer to the letters (3-p. 812), but Brown did and the council indicated to him that it desired to have his firm stop patronizing Triest & Co. (3-p. 826). Nothing more.

Circular Letter Issued by Portland Federated Trades Council.—Under the date of Portland, Oregon, August 21, 1903, the Portland Federated Trades Council issued a circular letter which constitutes Plaintiffs' Exhibit No. 103 (3-pp. 863, 864), and Plaintiffs' Exhibit No. 107 (3-p. 878), these exhibits being identical.

This letter appears to have been received by Nathan Schlussel, of Astoria, Oregon (3-pp. 918, 919), Aaron Fox, of Troutdale, Oregon (3-pp. 926 to 928) and some other customers of Triest & Co. in Oregon (3-pp. 878 to 881). This circular reads as follows (3-pp. 863, 864):

"To Whom it may Concern:

"Both the California State Federation of Labor and the San Francisco Council of Labor have declared unfair the hat jobbing house of Triest & Co., 116 Sansome Street, San Francisco, California, and 71 First Street, Portland, Oregon, on account of that firm persisting in handling the product of D. E. Loewe & Co., hat manufacturers, of Danbury, Conn., where the United Hatters of North America have been on a strike for fair conditions since August, 1902.

"At a meeting of the Portland Federated Trades Council held on the above date the action of the San Francisco Council of Labor and the California State Federation of Labor declaring Triest & Co. unfair was endorsed.

"We, therefore, beg to inform you that it is the desire of the union men and women in your locality and in the State, that you do not patronize Triest & Co. as long as such firm continues to handle the hats made unfair by the D. E. Loewe & Co. concern.

"Trusting you will withhold your patronage from Triest & Co. until the existing conditions are adjusted, we are," etc.

Circulars and Letters Issued After Commencement of Action.—There are also some circulars and letters which were issued by various unions other than the United Hatters or local unions of hatters at different periods after the time of the commencement of this action. The action was commenced on September 14, 1903, and these cir-

culars and letters were put in evidence ostensibly for the sole purpose of showing the existence of the conspiracy alleged in the complaint before that time (3-pp. 592, 593).

A circular was issued, under the date of Sept. 17, 1903, by the Washington State Federation of Labor and sent out to unions affiliated with the State Federation (3-p. 907) and to no one else (3-p. 910). But it was evidently distributed among merchants by these affiliated unions. Ellis H. Gross, of Tacoma, testified that he received a copy (3-p. 903). And Martin Triest testified that he received a copy (3-pp. 592, 593), and that other copies were handed him personally by different customers, or were enclosed in letters received by him from his customers stating that they had received them (3-pp. 856, 857).

This circular, which is Plaintiffs' Exhibit No. 68, was addressed "to whom it may concern," and states that Triest & Co. had been declared unfair by two California labor unions, the California State Federation of Labor and the San Francisco Labor Council, on account of persisting in handling the products of Loewe & Co., and that the action of these unions was endorsed by the Executive Committee of the Washington State Federation of Labor on Sept. 13, 1903. The circular concludes as follows:

> "We therefore beg to inform you that it is the desire of the union men and women in your locality and in the State, that you do not patronize Triest & Co. as long as such firm continues to handle the hats made unfair by the D. E. Loewe & Co. concern.
>
> "Trusting you will withhold your patronage from Triest & Co., until the existing conditions are adjusted, we are, very respectfully, William Blackman, president, James Menzies, secretary" (3-pp. 593, 594).

H. Knobel, Secretary to the Astoria (Oregon) Central Labor Union, under the date of Sept. 20, 1903, wrote Triest & Co. a letter, which, after referring to the handling by that company of the non-union goods of Loewe & Co. and the placing of the name of the company on the unfair list, contains the following (3-p. 859):

> "I am instructed to inform you that we will use all honorable means to prevent our friends from buying or selling any goods coming from your firm until such time as your firm handles only union made goods, bearing genuine union labels."

Under the date of Oct. 12, 1903, R. S. Wisler, secretary to the San Francisco Labor Counil, wrote a letter, which is Plaintiffs' Exhibit No. 74, to Herman Summerfield, of San Francisco, reading as follows (3-pp. 803, 804):

> "When calling on you some time ago with reference to the purchasing of hats from Triest Co., by your concern, I understood you to make the statement that you would transfer your patronage from Triest & Co., to some other concern. Since that time we have learned that you have again purchased more hats from the above named concern. We again request that you transfer your patronage to some other hat jobber in this city in order that we may not be compelled to class you among the concerns antagnostic to organized labor in this city."

The Executive Council of the California State Federation of Labor, issued a circular dated January 30, 1904, consisting of a resolution adopted by a convention of the State Federation held in the early part of that month and additions made by members of the Council (3-pp. 597, 598, 600, 603, 604). This circular, which appears in

the record as Plaintiffs' Exhibit 70, is addressed "To the Trades Unionists and Public of California". The resolution, as incorporated in this circular, after reciting the struggle between the United Hatters and Loewe & Co., the aid given Loewe & Co. by Triest & Co. to defeat the Hatters by persistently handling Loewe goods, endorses the action of other California labor unions in placing Triest & Co. on the unfair list, and concludes as follows:

> "and be it
> "Further Resolved, that the secretary inform the retail hat dealers throughout the State not to expect the patronage of union men and women while they patronize the houses therein declared unfair by organized labor" (3-p. 600).

Harry A. Knox, who was vice-president of the California State Federation of Labor in 1903 (3-p. 597), testified that these circulars "were sent to the business men and different organizations; anybody that we thought we could reach to help our cause" (3-pp. 603, 604), meaning by "help our cause" to help keep them from buying hats that did not bear the union label (3-p. 604).

This circular was published in the Labor Clarion, a labor paper published at San Francisco, on January 29, 1904 (3-p. 616), four and one-half months after the commencement of this action, and copies were received by Martin Triest (3-p. 872) and by Benjamin Cohen (3-p. 698) of San Francisco.

Legality of Placing Names on, and Publishing, "Unfair" Lists.—The only question which can possibly arise as to the legality of the actions of these labor unions, with which we have dealt so exhaustively, is as to the legality of placing the

names of these merchants on their unfair lists and publishing the lists, or publishing the fact of having declared the merchants unfair, and requesting members of labor unions and others not to deal with, or trade in the goods of, these merchants.

It must be confessed that there is not much judicially declared law upon this question, but we contend that according to well-settled fundamental principles of law these acts are entirely legal.

Members of a combination, it has been said, having a common interest to subserve may inform one another of the names of those whom they deem inimical. 7 Labbatt's Master & Servant, p. 8453, citing cases which will be referred to below.

In *Montgomery Ward & Co.* v. *South Dakota, etc. Ass'n.*, 150 Fed. 413, it was held that members of an association of retail dealers have a right to inform each other what wholesalers have failed to accede to their request not to sell to mail order or catalogue houses. Carland, J., said (pp. 417, 418):

> "The facts in evidence on this hearing show that the retail dealers have agreed among themselves that they will not purchase merchandise from wholesalers and jobbers who sell to catalogue or mail order houses; that they have corresponded with jobbers and wholesalers stating that the retail dealers were opposed to said wholesalers and jobbers selling to catalogue or mail order houses, and have requested the former not to sell to the latter. Are these acts of the retail dealers unlawful? Do they show unfair trade competition? Is persuasion unlawful when considered with reference to the facts of this case, or, in other words, is persuasion unfair competition? Upon the answer to these questions depends complainant's right to a temporary injunction.
>
> "That the retail dealers have a lawful right to agree among themselves that they

> will not purchase merchandise from wholesalers and jobbers who sell to catalogue or mail order houses cannot be denied, and it necessarily follows that they have the right to inform each other as to what wholesalers and jobbers do sell to catalogue or mail order houses. The question in this case is: What may they do, in addition to influence the wholesalers and jobbers not to sell to catalogue houses?
>
> "It must be conceded that complainant has the right to transact and carry on its business free from intimidation or coercion, that this is a property right, and that a combination to interfere with this right otherwise than in fair competition must show justification. The American cases, however, when carefully considered, show that the great weight of authority in the United States is in favor of the proposition that it is not unfair competition intimidation, or coercion for a combination to interfere with this right by persuasion or any peaceable means."

In *American Federation of Labor* v. *Buck's Stove & Range Co.*, 33 App. D. C. 83, Van Orsdel, J., in his concurring opinion, said (p. 123):

> "No one doubts, I think, the right of the members of the American Federation of Labor to refuse to patronize employers whom it regards as unfair to labor. It may procure and keep a list of such employers not only for the use of its members, but as notice to their friends that the employers whose names appear therein are regarded as unfair to labor. This list may not only be procured and kept available for the members of the association and its friends, but it may be published in a newspaper or series of papers. To this extent they are within their constitutional rights; at least, where a court of equity cannot intervene. But, as soon as, by threats or coercion, they attempt to prevent others from patronizing a person whose name ap-

pears on the list, it then becomes an unlawful conspiracy—a boycott."

In *Gray* v. *Building Trades Council*, 91 Minn. 171, it was held that a notification to the customers of the plaintiffs by the defendant labor union that the plaintiffs were "unfair" to labor did not in itself constitute a threat or intimidation.

It is no doubt true that placing a trader on the unfair list of a labor union, and publishing the fact that this has been done, becomes illegal if it is accompanied by coercion in the legal sense of the term. But there is here no evidence of coercion, or, at least, the jury could have found upon the evidence in the case that there was no coercion.

And there is no evidence in the record that the members of these labor unions were compelled to withhold their patronage from merchants, or the wares of merchants, whose names were placed on these unfair lists. No doubt this was expected of them, but there is no evidence that it was compulsory. Uncontradicted testimony in the record shows that it was not compulsory.

The plaintiffs' witness Wisler, who had been a member of a California labor union for seventeen years and had been secretary of the San Francisco Labor Council from July, 1903, until about the end of June, 1905 (3-p. 610), testified that the placing of a concern upon the list, which was at first known as the "boycott", then the "unfair" and later the "we don't patronize" list (3-p. 624) does not make it compulsory upon the friends of organized labor to refuse their patronage (3-p. 625).

The defendants' witness Conway, who had long been prominent in labor organizations (4-pp. 1282 to 1284), testified positively that a resolution

adopted by a national convention of a labor organization calling upon members of organized labor to refuse to "patronize any dealer or dealers who handle the product of non-union labor", and more especially the product of a firm that was named, was not compulsory upon any member of organized labor (4-pp. 1289, 1290).

And the circulars themselves do not show any attempt to coerce in the legal sense of the term. They contain statements to the effect that "union men do not usually patronize retail stores who buy from unfair jobbing houses or manufacturers", that "patronage of the firms named..... .....is taken by organized workers as evidence of a desire to patronize those who are opposed to the interests of organized labor", that organized workers had concluded to stop purchasing hats coming from Triest & Co., and expressions of the desire of union men that the merchants addressed should not patronize Triest & Co.

This amounts to nothing more than an intimation, and, let it be admitted, a strong intimation, that merchants who continued to deal in the Loewe goods of Triest would lose the patronage of members of labor unions. This may be a threat and therefore coercion in the vernacular sense of the word, but it is not in the legal sense.

In the legal sense of the term, the word threat does not embrace every announcement of an intention to do an act which will result in injury to another; it embraces only the announcement of an intention to do an unlawful act. 7 *Labbat's Master & Servant*, pp. 8448, 8458, citing and quoting from decisions. In *Macauley Bros.* v. *Tierney*, 19 R. I. 255, it was held that a threat by a plumbers' association to withdraw its patron-

age from wholesale dealers who sell to any who are not members of the association does not amount to coercion within a legal sense, the court saying that "though coercion may be exerted by the application of moral as well as physical force, the moral force exerted by the threat was a lawful exercise by the members of the association of their own rights, and not the exercise of a force violative of the rights of others".

In *Payne* v. *Western, etc., R. Co.*, 81 Tenn. (13 Lea) 507, it is said (p. 521):

> "In law, a threat is a declaration of an intention or determination to injure another by the commission of some unlawful act; and an intimidation is the act of making one timid or fearful by such declaration. If the act intended to be done is not unlawful, then the declaration is not a threat in law, and the effect thereof is not intimidation in a legal sense".

In *Cote* v. *Murphy*, 159 Pa. 420, wherein it was held that the sending of notices to wholesalers that members of an employers' organization, formed to resist the demand by workmen for an increase in wages, will withdraw their patronage if sales are made to persons acquiescing in the workmen's demand, is not such coercion or threat as will render the combination unlawful, the court said (p. 431):

> "The threats referred to, although what are usually termed threats, were not so in a legal sense. To have said they would inflict bodily harm on other dealers, or villify them in the newspapers, or bring on them social ostracism, or similar declarations, these the law would have deemed threats, for they may deter a man of ordinary courage from the prosecution of his business in a way which

> accords with his own notions; but to say, and even that is inferential from the correspondence, that if they continued to sell to plaintiff the members of the association would not buy from them, is not a threat. It does not interfere with the dealer's free choice; it may have prompted him to a somewhat sordid calculation; he may have considered which custom was most profitable, and have acted accordingly, but this was not such coercion and threats as constituted the acts of the combination unlawful".

In *National Protective Ass'n.* v. *Cumming*, 170 N. Y. 315, wherein the court upheld the right of a labor union to refuse to permit its members to work with members of a rival organization and to order a strike unless the objectionable employees were discharged, it was said (p. 329):

> 'the defendant associations had the absolute right to threaten to do what they had a right to do. Having the right to insist that plaintiff's men be discharged and defendant's men put in their place if the services of the other members of the organization were to be retained, they also had the right to threaten that none of their men would stay unless their members could have all the work there was to do."

To the same effect is *Newton Co.* v. *Erickson*, 70 Misc. 291, 126 N. Y. Supp. 949, affirmed, without opinion in 144 App. Div. 939. And see the dissenting opinion by Circuit Judge Caldwell in *Hopkins* v. *Oxley Stave Co.*, 83 Fed. 912, at page 924.

And so as to coercion. In the legal sense of the term, coercion does not embrace every constraint placed upon the free will of another, but only such constraint as results from the announcement of an intention to do, or from the doing of, an

unlawful act to the prejudice of the person constrained. *7 Labbatt's Master & Servant,* pp. 8448, 8458, citing and quoting from decisions. In *J. F. Parkinson Co.* v. *Building Trades Council,* 154 Cal. 581, it was said by Sloss, J., concurring: "One cannot be said to be 'intimidated' or 'coerced', in the sense of unlawful compulsion, by being induced to forego business relations with A, rather than lose the benefit of more profitable relations with B. It is equally beside the question to speak of 'threats' where that which is threatened is only what the party has a legal right to do."

This being the law, unless the decision of this Court in *Eastern States Retail Lumber Dealers' Assoc.* v. *United States,* 234 U. S. 600, which was decided after the foregoing was written, is to the contrary, the evidence relating to the actions of labor unions other than the United Hatters, which we have exhaustively reviewed above, called for the giving of the requested instructions as to the coercive character of the combination and boycott alleged in the complaint.

Even if this decision is deemed to be adverse to our contention, it by no means follows that the requested instructions should not have been given.

Responsibility of Defendants for Acts of Friendly Unions.—Should the court find, as a matter of law, that there was coercion because of the adoption by labor unions other than the United Hatters unions of these so-called boycott resolutions declaring Loewe & Co., Triest & Co., and T. D. Stokes & Co. unfair and sending out circulars and letters to retailers stating that such action had been taken, it does not follow that the coercive conspiracy and boycott alleged in the complaint has been so conclusively proved against the defendants

in this case that it was unnecessary to give the instructions requested.

The defendants in this case were all residents of Danbury, Bethel and Norwalk, Connecticut (2-pp. 64 to 68). Most, almost all of the 186 defendants, concededly did not participate in the slightest degree either in the campaign against Loewe goods and for union-label goods which was conducted by President Moffitt and the advertising agents when the matter was turned over to him, which was some time after the strike (see *supra*, p. 39), nor did they have anything to do either with the strike or the negotiations preceding the strike. They were made defendant simply because they were members of local hatters' unions, in the respective places where they lived, which were affiliated with the United Hatters, and because they owned property (see *supra*, p. 3). About two of the defendants worked in the Loewe factory at the time of the strike but had nothing to do with the negotiations which preceded the strike nor with the work of Mr. Moffitt and the advertising agents. Of the few remaining defendants some were officers of the local unions in Danbury, Bethel and Norwalk, some were officers of the United Hatters, and some had attended conventions of the United Hatters, but, with the exception of Martin Lawlor, who participated in the negotiations preceding the strike, and Hugh C. Shalvoy, who attended the shop meetings at the time of the strike and visited Mr. Loewe after the strike to arrange a conference with Mr. Moffitt, none of them had anything to do with the negotiations preceding the strike, with the strike, nor with the work of Mr. Moffitt and the advertising agents. Neither Mr. Moffitt nor any of the advertising agents, except Daniel P. Kelly, is a defendant, nor are any of the members or officers of these friendly unions defendants.

As we have seen (*supra*, pp. 49, 50), the recommendation to employ advertising agents, which was made to the 1900 convention of the United Hatters by President Moffitt, and the resolution authorizing their employment, which was adopted by the convention, both referred to the works to be performed by the agents as "advertising the union label and fighting the sale of non-union made hats." And this was understood to be the work of the agents by those who attended this convention as delegates. As we also have seen (see *supra*, p. 50), Hugh C. Shalvoy, who attended the convention (2-p. 85), testified that he understood that the agents were placed on the road to advertise the label of the United Hatters, their duties being to go around to different dealers, retail dealers or jobbers, advertising the label and endeavoring to have them handle hats bearing the label of the United Hatters. And Martin Lawlor, who was elected vice-president of the United Hatters at this convention (2-p. 47), gave similar testimony.

These being the appointed duties of these agents, the defendants are not necessarily liable for acts done by them outside of the scope of their duties. The defendants can only be held responsible for such acts by showing knowledge by them that the acts were done. As we shall see later, there is no competent evidence in the record to show such knowledge. And, in the absence of such knowledge, responsibility for the acts which we are now considering can rest only upon Mr. Moffitt, the advertising agents and the officers and members of the unions in Virginia and on the Pacific Coast who did them, and who were not affiliated with the United Hatters.

While there is evidence that several of the advertising agents urged some of these declarations

of unfairness (3-pp. 508, 602, 606, 607, 621, 622, 634, 937) a jury, if properly instructed as to the issues in the case could very reasonably have found that these acts of unions other than the United Hatters were not the result of any conspiracy entered into by the defendants and other members of the United Hatters, but were the result of a stepping aside from their appointed duties by the advertising agents and by Mr. Moffitt, who had charge of them, and also of an excess of zeal on the part of these unions in their efforts to render assistance to the hatters. In this connection it may be observed that it is only through the advertising agents that the defendants can be held responsible for the acts of these unions. While these unions were affiliated, some of them directly and some indirectly, with the American Federation of Labor, as was also the United Hatters, there was no connection between them and the United Hatters. The American Federation of Labor took no part whatever in the alleged conspiracy, and the United Hatters had no control whatever over these unions, but could only appeal to their sympathy in asking for assistance in creating a demand for the hatters' union label.

Because of the refusal of the trial judge to give the instructions requested, the jury may have found that, although none of the defendants had knowledge of the placing of Triest & Co. and T. D. Stokes & Co. on "unfair" lists by these unions and the giving of information of that fact to retailers and others, they were nevertheless liable because it understood that the union label and the voluntary withholding of patronage by members of labor unions, coupled with the advertising of the label and of the attitude of union men and women toward non-union, including Loewe, goods, constituted a "boycott" such as was sufficient to make the defendants liable in this case.

DUTY AND OPPORTUNITY OF TRIAL JUDGE TO GIVE INSTRUCTIONS REQUESTED.

There can, of course, be no question as to the duty of a trial judge to submit to the jury, when requested to do so, all the issues raised by the pleadings and the evidence.

In *Douglass* v. *McAllister*, 7 U. S. (3 Cranch) 298, the question before the court was whether the court below should have given the instructions prayed for by the plaintiffs in error, and Chief Justice Marshall said (p. 300) that "the court was certainly bound to give an opinion, if required, upon any point relevant to the issue." Similar language was employed by the same justice in *Smith* v. *Carrington*, 8 U. S. (4 Cranch) 62, 71. This last-cited case is quoted from with approval in *Texas & Pacific R. Co.* v. *Volk*, 151 U. S. 73. And see *Bird* v. *United States*, 180 U. S. 356, 361-362.

In the case at bar the trial court denied requests to instruct the jury upon the issues made by the pleadings. "Pleadings," it has been said, "although read at the trial in the hearing of the jury, are addressed to the court. They are in technical language, understood by the court, but often unintelligible to the jury. And it is accordingly held by the great weight of authority that it is the duty of the court to state to the jury the issues made by the pleadings, and erroneous to read the pleadings to the jury or refer them to the pleadings to ascertain the issues in the case." 38 *Cyc.* p. 1608, citing many cases. And a text-writer of recognized authority has said that it is the duty of the court to determine what are the issues, and to state them to the jury, and it is error

to refer them to the pleadings to determine the issues, in whole or in part. 2 *Thompson on Trials*, 2nd ed., §2314.

This is exactly what the trial judge did in this case. After a very brief and very inadequate resumé of the allegations of the complaint (1-pp. 413, 414, fols. 1651 to 1655), the learned judge said (1-p. 414, fol. 1655):

> "It is unnecesasry for me to quote further from this complaint in view of the number of times that it has been referred to, the discussion of counsel, the reading, I think, of the whole complaint at the opening of the trial, and the fact that the complaint will be in your hands when you are deliberating on this case."

Another reason which the learned trial judge deemed sufficient to justify the refusals of the requests to charge is stated in the charge as follows (1-p. 421, fol. 1681):

> "Counsel for the defendants read to you extracts from opinions of different judges, including President Taft when he was a federal judge. The law as stated in those opinions, and read to you by counsel, is correct, as I understand it, and this relieves me from going over the defendant's requests and charging you upon those subjects."

But in the case of *Pointer* v. *United States*, 151 U. S. 396, this Court, at pages 416 and 417, expressed its disapproval of the practice of trial judges reading from the opinions or judgments of other courts when charging juries. Certainly, the course of the trial court in refusing to charge as requested because counsel who made the requests had read to the jury extracts from the opinions of other judges can neither be approved nor tolerated.

There is no means of knowing which of these requested instructions, if any, were covered by the matter which was so read to the jury. And in *Bird* v. *United States,* 180 U. S. 356, this court, after holding that a certain instruction should have been given by the trial judge, said (p. 362) that it could not "be fairly presumed that the error was healed by any modification or correction made in some other and undisclosed part of his charge." So, in this case, it cannot be presumed that the matter covered by the requests to charge which were refused had been presented to the jury by the undisclosed extracts from the opinions of different judges which counsel for the defendants read.

In this case it is not as if the trial judge had not, by a timely making of requests to charge, been accorded a fair opportunity to consider the instructions refused. The record shows that, "prior to the charge of the court to the jury and to the arguments of counsel, the counsel for the defendants submitted to the court and requested the court to give to the jury" the instructions which were refused (5-p. 1890, fol. 7558).

That the refusal to charge as requested was deliberate, and not due to any remissness on the part of counsel for the defendants, is further shown by the fact, as appears from the first sentence of the charge, that the learned judge departed in this case from his usual practice and had "resorted to writing out the charge" (1-p. 411, fol. 1644).

II.

Instructions Defining Liability of Individual Defendants Given and Refused.

We now come to the *Sixteenth, Eighteenth* and *Nineteenth Assignments of Error,* which, however, will not be set forth until certain preliminary matters have been considered.

THEORY OF PRECEDENT AUTHORIZATION.

In order to understand the meaning of the charge given and the refusals to charge which are the subject of these assignments of error, and to appreciate their application to the issues made by the pleadings and by the evidence, it is necessary first to consider the theory of the plaintiffs, which was voiced in the charge of the trial judge, as to antecedent authorization, that is, a preauthorization of the particular conspiracy against the plaintiffs which is alleged in paragraph 20 of the complaint.

Allegations in Complaint and Generally as to Proof.

The theory of antecedent authorization is based upon the allegations of a general conspiracy in paragraphs 16 and 17 of the complaint. In paragraph 16 it is alleged, in effect, that there was a conspiracy directed against "all manufacturers of fur hats in the United States" (vol. 1, p. 11). And in paragraph 17 it is alleged that this "general combined scheme and purpose" had been di-

rected against, and had forced, seventy manufacturers of fur hats, naming them, to unionize their factories (vol. 1, pp. 11, 12). Among the manufacturers whose names are there given are F. Berg & Co., of Orange, N. J., and Harry H. Roeloffs & Co., of Philadelphia.

Under these allegations the plaintiffs attempted to show that a general conspiracy of the character alleged in the complaint had existed for so long a time and that the unlawful means alleged in the complaint, consisting of intimidation, threats, false representations and coercive boycotts had, in the language of the charge of the court (vol. 1, p. 417, fol. 1667)

> "been so frequently used with the express or tacit approval of the association, that its agents were warranted in assuming that they might use such unlawful means in the future and that the association and its individual members would approve of or tolerate such use whenever the end sought to be obtained might be best obtained thereby".

Of course, if there was antecedent authorization by the defendants of the doing of the illegal acts alleged in the complaint by the officers and agents of the United Hatters, it is of no importance, assuming that Moffitt and the advertising agents under his control employed such measures against the plaintiffs, that the defendants had no knowledge that such measures were being employed against the plaintiffs; they would be liable in this action because of that authorization even though they had no such knowledge.

Hence, before we consider the instructions and requests to charge which deal largely with the knowledge of illegal acts directed against the plaintiffs which is necessary to charge a defend-

ant with liability, it is important to enquire what evidence there is in the case to support the theory of antecedent authorization of illegal acts of the character alleged in the complaint.

It is alleged in paragraph 16 that the defendants, together with other persons united with them in the combination known as the United Hatters, have been for many years, and now are, engaged in a combined scheme and effort to force all manufacturers of fur hats in the United States against their will, to organize their factories as union shops

> "by restraining and destroying the interstate trade and commerce of such manufacturers, by means of intimidation of and threats made to such manufacturers and their customers in the several States, of boycotting them, their product and their customers, using therefor all the powerful means at their command as aforesaid, until such time as from the damage and loss of business resulting therefrom, the said manufacturers should yield to the said demand to unionize their factories."

This is, of course, an essential allegation to bring the alleged combination within the inhibition of the Sherman Act.

But there is no evidence in the record to prove it.

To prove the allegations in paragraph 17 that the defendants, "in pursuance of the said general combined scheme and purpose" (*i. e.* the general scheme and purpose alleged in paragraph 16) "and by use of the means above stated" (*i. e.*, the intimidation and threats alleged in paragraph 16), had forced the 70 manufacturers of hats named to unionize their factories, the plaintiffs relied, according to the admission of counsel, upon the re-

port of President Moffitt to the 1903 convention of the United Hatters (5-pp. 1795).

Statements to the effect that a great many, and perhaps all, of these factories had been unionized are contained in this report (2-pp. 34 to 36, 48; 5-p. 1768), but there is no mention or hint at the employment of illegal means, and some doubt was raised by the testimony of at least two witnesses whether as much had been accomplished in unionizing factories during Mr. Moffitt's administration as was claimed in his report. One witness stated that he thought that Mr. Moffitt's report was elaborated (5-pp. 1771, 1772), and another witness stated that he did not think that Mr. Moffitt had done half the work that he claimed he had done (5-p. 1869). And, furthermore, there is uncontradicted testimony that some of the manufacturers applied for union recognition (5-pp. 1767, 1769, 1793, 1794).

There are other references in the record to the unionizing of these factories which were derived from the following sources: a news item in the *Danbury Evening News* for November 9, 1900, giving an account of the unionizing of the factory of E. A. Mallory & Sons (4-pp. 1120); news items in a number of issues of the *South Norwalk Evening Sentinel* relating to the unionizing of the factory of E. V. Connett & Co., showing little, if anything, more than that there was a strike in that factory (4-pp. 1133 to 1135); an entry in the minutes of a meeting of Local No. 10 (Danbury Makers) held on November 22, 1900, stating that "President Maher reported the factory of Mallory & Sons had been unionized" (2-99); a report by President Moffitt in the American Federationist for March, 1901, stating the number of factories unionized in the last six months, naming them, and concluding as follows (4-p. 1180):

"We are also negotiating at the writing of this report for the unionizing of two other large non-union factories.

The success of our label is simply phenomenal and this is solely owing to the agitation being carried on by our agents on the road, and the support given by the organized labor of the land".

None of these references to the unionizing of factories suggest, or remotely hint at, the employment of unlawful means. And the excerpt from President Moffitts' report in the American Federationist, quoted above, suggests that the unionizing had been accomplished by negotiations and the advertising of the label, while the news item in the *Danbury Evening News*, mentioned above, clearly shows that the unionizing of the factory of E. A. Mallory & Sons was the result of friendly negotiations.

The whole case of the plaintiffs, so far as this theory of antecedent authorization is concerned, must rest upon the evidence which they put in, or what passed for evidence in the trial court, relating to controvercies between the United Hatters and the firms of F. Berg & Co., of Orange, N. J., and H. H. Roelofs & Co., of Philadelphia.

We shall set forth the material in the record relating to these two controversies as briefly as possible and with the greatest care and utmost thoroughness.

To justify the submission of the question of antecedent authorization to the jury there must, of course, have been evidence not only of the doing of the unlawful acts alleged in the complaint in the conduct of these contests by the agents and officers of the United Hatters, but there must also have been evidence that the defendants either had participated in or had knowledge of those acts.

There is no evidence whatever that any of the defendants, except Martin Lawlor, who was an advertising agent during the Berg controversy, and Daniel P. Kelly, who was an advertising agent during the Roelofs controversy, participated, in the slightest degree, in these contests.

And the question of knowledge by the defendants of what was done by the officers and agents of the United Hatters in connection with these controversies is not in the case for the reason that there is no evidence that any acts of the character alleged in the complaint, or illegal acts of any kind, were done. This we shall now show.

Berg Controversy.

Strike on September 22, 1899.—It appears from the report of President Moffitt to the 1900 convention of the United Hatters, which was put in evidence by the plaintiffs, that the strike, which began the controversy with F. Berg & Co., was the result, and part, of an attempt to enforce the law of the State of New Jersey making fifty-five hours a legal week's work in factories, the fifty-five hours being divided into ten hours a day from five days in the week and five hours on Saturday (2-pp. 15, 16). The controversy was started by the local hatters' union at Orange, which appointed a committee to consider the matter. This committee, after considering and working on the matter for several months, made a report that ten hours should constitute a day's work (2-p. 15). These hours of work were established in the union factories at Orange; but the union manufacturers contended that this placed them at a disadvantage with non-union manufacturers whose factories were party manned by union hatters (2-p. 16).

This contention was acknowledged to be true by the executive board of the local union and it was decided that wherever members of the hatters' association were employed they, in order to retain their membership in the United Hatters of North America, would be obliged to live up to the fifty-five hour law of New Jersey (2-p. 17). The non-union factory of F. Berg & Co. was the largest factory in the Orange district and only second in size to the largest soft hat factory in the country. It employed 110 members of the hatters' union (2-p. 17).

On September 15, 1899, the members of the hatters' union who were employed in the Berg factory were officially notified that they would be obliged to observe the state 55 hour law and stop work precisely at noon on Saturdays. Berg & Company notified the members of the union that, should they observe the law and stop work on the following Saturday, they would be discharged. In consequence of this notification the union workmen in the factory, numbering 110, stopped work in a body on Friday, September 22, 1899, and, with the exception of 29 men in the finishing department, the remaining members of the shop's crew stopped work of their own volition, so that there were, in all, 485 men on strike (2-p. 17). There were some matters connected with the strike that could only be dealt with by the Board of Directors of the national association, and, therefore, just one week after the strike, the President issued a call for a meeting of the national Board of Directors to be convened, in compliance with a request of the local association at Orange. The Board met at Orange on September 27, 1899, and the local executive board appeared before it and gave a lengthy and detailed statement of what the trouble was and what had brought about the difficulties with

F. Berg & Co. (2-p. 18). The members of the Board, after discussing the Berg trouble in its various phases for several hours, decided, by unanimous vote, to sustain the action of the Orange association, "and to use all fair means in their power to make the factory of F. Berg & Co. a union factory" (2-p. 19).

There is nothing whatever in the record to indicate that there was anything illegal in connection with the strike. So far as appears, no contracts were broken, and while the union men were called out by the officers of the United Hatters, this, as we have seen (*supra*, pp. 35-38), is within the sanction of the law.

So far as the record shows, there was no violence. There were no disturbances, no threats, no intimidation and no coercion of any kind, except such as were caused by the members of a private detective agency who were employed by the Berg Company (2-p. 22). The very report by President Moffitt, which the plaintiffs put in evidence, shows that the strike had been brought to the attention of a local grand jury, and that the grand jury, after a thorough investigation, reported to the court in part as follows (2-pp. 23, 24):

> "We take great pleasure in saying that the employees in this case have conducted themselves as lawabiding citizens should, and that there has not been any breach of the peace on their part. The good order maintained in the city of Orange during this strike reflects credit alike on the authorities and on the parties in interest".

Support Given Strikers by United Hatters.—In the 1900 convention of the United Hatters of North America, which was held about nine months after the strike in the Berg factory, a resolution

was adopted which recited the efforts of the organized hatters at Orange to enforce the law of New Jersey relating to hours of labor, that these efforts had been met with the determined opposition of F. Berg & Co., that the conduct of the hatters there had been such as to gain for them the unsolicited commendation from the grand jury of Essex County, and concluded with resolutions expressing admiration for the organized hatters at Orange, approval of every action taken by them and pledging continued support until the firm of F. Berg & Co. should agree to observe the laws of the state and the rules of the hatters' association (2-p. 11). The committee on the President's address also recommended the continuance of the contest with F. Berg & Co., and this resolution was unanimously adopted (2-p. 13). But in neither of these resolutions is there any reference to the means which had been, or were to be, employed, except that, in this report by the committee on the President's address, it was also recommended that at least six men should thereafter be kept on the road "advertising the union label and fighting the sale of non-union made hats" (2-p. 13).

A special assessment of 2 per cent. upon the earnings of members of the United Hatters was levied in all districts to assist the strikers in carrying on the contest with the Bergs (2-pp. 49, 50, 83, 383; 5-p. 1742).

Work of Advertising Agents.—Missionaries, that is, advertising agents, were sent to different parts of the country "to fight the Berg hats in particular and to advertise the union label in general" (2-p. 26). Labor organizations were visited by these agents, during the controversy with F. Berg & Co., and the members asked to buy no hats without the union label. These agents were to

work for three years and were to advertise not only their own, that is, the hatters' label, but other nuion labels wherever the opportunity presented itself (4-p. 1115).

But there is nothing in the record to indicate the employment by these agents of the coercive measures alleged in the complaint, or that they did anything more than to encourage, by persuasive means, the substitution of union made hats for the Berg hats.

Information as to who were the customers of Berg & Co. and as to where their places of business were located was obtained (2-pp. 26, 31; 5-p. 1866) and the advertising agents undoubtedly directed their attention to such customers to a considerable extent (5-p. 1743), but as has been said, there is nothing illegal in obtaining this information, and it has no tendency to prove the allegations of the complaint, if it was not employed as one of the steps in promoting a coercive boycott (see, *supra*, pp. 70-72), and there is nothing to show that it was so employed.

Not a single wholesale or retail dealer in hats, who dealt in the Berg hats at the time of the controversy with F. Berg & Co., was called to testify as to the methods employed by the representatives of the United Hatters in that contest, except Edwin F. Keen, of Eli Keen's Sons, of Philadelphia, who testified that he was buying hats from the Berg Company at the time and that he had heard of the difficulty with Berg & Co., but was unable to give any information as to the conduct of the hatters' union in connection with the Berg Company (2 pp. 470, 471). John Reding, of Moore, Smith & Co., Boston, testified that he was visited by representatives of the hatters' union at the time of the Berg trouble, but he was not asked to state what they said to him (3-p. 553).

Notwithstanding that the word "boycott" does not, as we have seen, necessarily import illegality (*supra*, pp. 45, 46) and does not necessarily denote the coercive boycott alleged in the complaint, the employment of the word "boycott" by witnesses to characterize some of the acts of the advertising agents in connection with the Berg controversy was treated at the trial, not only by counsel for the plaintiffs but also by the court, as evidence supporting the allegations of the complaint. The witness Maher said that the advertising agents had done some boycotting in connection with the Berg controversy (5-pp. 1882, 1883) but what he meant by the term "boycotting" does not appear. And the defendant Lawlor stated that there was a boycott, but there is nothing to show what he understood by the term, and, when he attempted to explain, the trial judge refused to let him do so. The refusal of the trial judge to allow this explanation could not but have conveyed to the jury a false idea as to what was sufficient proof by the plaintiffs to establish the allegations of their complaint. It was so unfair to the defendants that we deem it important to set forth the colloquy between the court and the witness as it appears in the record, which is as follows (5-p. 1869):

"The Court:

Mr. Witness, you mean that this money that was paid out to the agents for the time spent by them was principally for advertising and not boycotting? A. Yes, sir.

The Court:

And do you mean to go further and say that they did not boycott? A. No, I don't, Your Honor, I mean to say that when we—

The Court:

Did they boycott? A. Why, I think they did in the Berg and Roelofs cases.

The Court:

And you knew it? A. I knew something of it; yes, Your Honor, I did.

The Court:

I suppose this cross examination now relates simply to the matter of degree.

Witness:

I might say just to qualify what I said to Your Honor that at that time we thought we had a perfect right to go to a merchant, or have them go to a merchant——

The Court:

I wasn't asking you about that at all. I was just asking you what the fact is? A. Well, that is just the answer.

By Mr. Merritt:

Q. It was true, wasn't it, that one of the policies of your organization was as far as possible to prevent non-union manufacturers getting started in doing business? A. Our policy was to increase the sale of union goods.

The Court:

Now, you listen to the question and answer it."

The remaining material in the record relating to the advertising agents will now be set forth to show how utterly devoid the record is of anything to show that illegal methods, or the methods alleged in the complaint, were employed in connection with the Berg controversy.

In the *Danbury Evening News* for June 18, 1900, there is an article from the *Cleveland (Ohio) World* referring to the controversy with F. Berg & Co., and the visits of Mr. Brady to Cleveland, wherein it is said (pp. 4-1114, 1115):

"The organization has several agents out throughout the country who are fighting the firm. Twice has one of our agents, Mr.

Brady, been to Cleveland. He is here now. The first time he was here he visited the labor organizations and told them of the fight and asked that none but hats with the union label be purchased. One of the jobbers to whom the New Jersey firm sold hats is located in Cleveland, and it was this fact that brought Mr. Brady here. He visited every dealer of hats in the city, some of the members of the Clerks' Union accompanied him. To these dealers Mr. Brady explained just what he wanted and expected. As a result of his work a jobber last Wednesday signed an agreement with Mr. Brady to sell nothing but union hats in the future."

At a meeting on January 10, 1900, of Local Union No. 2 (Bethel Finishers), to which some of the 27 defendants who lived in Bethel (2-p. 65) may have belonged, a communication from Orange was read describing the progress of the strike in the Berg factory and stating that the committee in charge was "about to send four men on the road to chase down his goods" (2-pp. 70, 71).

The minutes of this local shows that, at a meeting held on February 8, 1900, Daniel Brady, representing the labor organization at Orange, made a lengthy statement regarding the troubles in Orange with Berg & Co., stating that there were "six men on the road creating opposition to Berg's hats, advertising the label with good effect," and "also appealed to all present to buy nothing but union goods" (vol. 2-72).

At another meeting of this local held on April 21, 1900, the defendant Lawlor referred to matters connected with the Berg strike, and "spoke of his recent trip through the West in the interest of the label, saying that in his opinion much good came from the agents on the road" (2-p. 73).

The minutes of the meeting of Local No. 10 (Danbury Makers) held on April 12, 1900, contain the following entry (vol. 2-99):

> "Mr. McGrath stated to the meeting that the stories going around that Berg & Co. were doing poor work wasn't so. He had been on the road for several weeks, and had made a good success in having Berg's orders countermanded. He gave a good account of the work done by all of the men on the road, and felt sure it would not be long until Berg gave in."

The minutes of Local No. 11 (Danbury Finishers) on February 7, 1900, show that Daniel Brady, of Orange, N. J., addressed the meeting on the strike in the Berg & Co. factory, thanking the members for the assistance they had rendered, giving information about the strike, saying that he was convinced that the strike would be successful, and stating that there were six men on the road working on the Berg hat (2-p. 88; 5-pp. 1741, 1742).

The minutes of a meeting of this local held on April 11, 1900, contain the following (2-p. 90):

> "Mr. Daniel McGrath, who was one of the agents sent on the road, advertising the label on Berg affair, gave quite a lengthy statement of his experience and success while on the road. Mr. James P. Maher, National Treasurer, also made a statement of the affairs as they existed in Orange, * * *. Motion that it is the sense of this meeting that we uphold the National Officers in the stand they have taken, and that we keep up the 2% assessment. Carried."

Distribution of Circulars.—The minutes of the meetings of Local Union No. 18 (Norwalk Finishers) show that, at a regular meeting held on

January 10th, 1900, a communication was received from Orange giving an account of the strike at the Berg factory, and that a letter was received from the secretary of the United Hatters enclosing copies of circular letters that were being sent out to retailers and jobbers in hats and others that went to labor organizations in the country, appealing to them to assist the hatters' organization in its fight with the Berg Co. (2-p. 84). The record nowhere shows the contents of these circulars.

Threats to Withdraw, and Withdrawal, of Label.—Several factories which were entitled to use the union label of the United Hatters, but which were filling orders for Berg & Co., were threatened with the withdrawal of the label, and the label was withdrawn from Austin, Drew & Co., for that reason, three times before the firm finally agreed not to work for Berg or to fill his orders under any circumstances. The label was also removed from the union stiff hat factory of Volk & Co., at South Norwalk, Connecticut, because of that firm's violation of its promise to the national officers of the United Hatters to stop handling Berg's hats (2-pp. 25, 26). This appears by the report of President Moffitt to the 1900 convention of the United Hatters. And a new item in the *Evening Hour*, of Norwalk, for January 19th, 1900, states that the union label had been taken away from Volk & Co. because that firm sold the Berg soft hat in connection with stiff hats of its own manufacture and leading its customers to believe that the label was used only for stiff hats (4-p. 1139).

But, as we have said (*supra*, pp. 69, 70), the United Hatters has an unquestionable right to withdraw its label when the possibility that it will be misused arises.

Settlement of Controversy.—Extracts from the reports of the proceedings of the 1903 convention of the United Hatters show that President Moffitt made a report to that convention stating, among other things, that the Berg strike had been ended in September, 1900, resulting in a complete triumph for the union, and describing the negotiations which produced the settlement (2-pp. 34, 35).

A number of news items from Danbury and South Norwalk newspapers were put in evidence. These contain references to the negotiations preceeding the settlement of the Berg controversy and statements that the strike had been settled, but nothing at all which tends to establish the allegations of the complaint. To save space, we shall content ourselves with a bare reference to these items of so-called evidence.

News items mentioning the Berg controversy were put in evidence from the following issues of the *Danbury Evening News:* August 10, 1900 (4-pp. 1115, 1116); August 11, 1900 (4-pp.1116, 1117); August 14, 1900 (4-p. 1117); August 17, 1900 (4-p. 1118); May 18, 1903 (4-p. 1105).

From the *South Norwalk Evening Sentinel* there are items which were published in the issues for the following dates: August 10, 1900 (4-pp. 1132, 1133); August 14, 1900 (4-p. 1133); August 15, 1900 (4-p. 1134); August 16, 1900 (4-p. 1134); September 4, 1900 (4-p. 1135); September 7, 1900 (4-pp. 1135, 1136).

In the American Federationist for September, 1900, Secretary Phillips of the United Hatters reports as follows (4-p. 1121):

> "Thanks to organized labor the Berg strike is over. It is a grand big shop, 200 of our men go to work in it right away, displacing an

> equal number of scabs. All hail the power of organized labor and of the union label."

And in the same issue of the American Federationist there is a report by organizer Warner, recounting the victory of the United Hatters in their fight against F. Berg & Co., the attempt to have the strikers and the leaders indicted and the action of the grand jury in complimenting the union officers and their agents upon the orderly and creditable manner in which the strike was being conducted, and concluding as follows (4-p. 1121, 1122):

> "Last Fall the fight against the firm was extended by the union sending missionaries throughout the country to secure the sympathy and co-operation of labor unions to urge the boycott of the Berg hat. The strike has cost the United Hatters over $20,000, and it is said that the Bergs have spent over $300,000 in fighting the union."

The plaintiffs' witness, Savannah, stated that he met Agent Kelly at Oakland, California, sometime in the summer or fall of 1904, and that Kelly told him that the hatters' union had beaten Berg & Co. (3-p. 642).

The plaintiffs put in evidence the contents of the report of the committee which audited the financial report which the President made to the 1900 Convention of the United Hatters as to the expenses of the Berg controversy (5-pp. 1755 to 1757, 1863 to 1865, 1872).

The minutes of a meeting of Local No. 2 (Bethel Finishers) on October 10, 1900, show that "in the case of Berg, 130 cards were finally granted out of 500 men" and that Berg "didn't want to have cards granted, but the Board wouldn't give them up" (2-p. 73).

The minutes of the meeting of Local No. 10 (Danbury Makers) on April 19th, 1900, show that speeches were made criticising and ridiculing Board of Directors for its action in the settlement of the Berg controversy and that speeches were made in defense of the action of the Board (2-p. 99).

ROELOFS CONTROVERSY.

Strike in April, 1901.—The exact time of the commencement of the strike in the factory of Henry H. Roelofs & Co., at Philadelphia, does not appear. However, it appears that, about the middle of April, 1901, two local unions in Philadelphia petitioned Moffitt to bring before the Board of Directors of the National Association, for consideration and action on the part of the Board, a strike then being prosecuted by the locals against the non-union firm of Henry H. Roelofs & Co. (2-pp. 37, 400, 401).

The purpose of the strike, according to a news item in the Journal for June, 1901, which was put in evidence by the plaintiffs, was

> "to compel that firm to recognize the rules and regulations of the United Hatters of North America,"

and the cause of the strike, according to the same source, was the unfavorable conditions existing in the factory; it is said that

> "the conditions in the Roelof factory had become so intolerable that no self-respecting man could put up with them. . . . Weekly, hands in the Roeloff factory were compelled to work nights and all day Saturday for bare living wages, and the methods adopted by the firm for getting the most possible out

> of its employees for the least money made conditions in the factory a little better than slavery" (2-pp. 398, 399).

And in the report by President Moffitt to the 1903 convention of the United Hatters it is said (2-p. 37):

> "Conditions in the Roelofs factory at the time the strike began were all that could be imagined as averse and anagonistic to those for which unionism stands. Like former strikes engaged in by our organization the Roelofs strike was a campaign for the recognition of union principles and the installation of union conditions in the big factory" (2-p. 37).

Support Given Strikers by United Hatters.—The Board of Directors of the United Hatters heard statements by committees from the two local unions of Philadelphia, by a committee from the Roelofs shop crew and referred the whole matter to the General Executive Board, with full power to assist the local unions in their fight. On the 7th of May the Executive Board held a meeting at Philadelphia, and, after several ineffectual conferences with Mr. Roelofs, decided "to fight the battle to a successful termination" and placed President Moffitt "in charge to direct the movements the same as was done by him in fights of a like nature," the Board of Directors empowering the expenditure of such money from its funds as might be necessary to end the strike (2-pp. 37, 401). It is evident that the same methods were employed in this as in the preceding controversy with Berg; for President Moffitt reported in the Journal for February, 1902, that he had been placed "in charge to carry on the fight on the line well known to members of our organization" (2-p. 408).

Work of Advertising Agents.—The advertising agents, who, as we have seen, had been employed by the United Hatters long before this Roelofs controversy, and even before the preceding trouble with the Bergs, and were continuously employed, regardless of the existence of trouble between the hatters' union and some manufacturer (*supra*, p. 49), were actively employed, in accordance with the usual methods of the hatters' union, to help carry on this fight with the Roelofs company (2-p. 402).

These agents, while advertising the label generally, centered their efforts, to a large extent, on the Roelofs goods; they endeavored to discourage the selling of these goods, but there is no evidence that, in doing so, they employed the illegal means alleged in the complaint.

Shalvoy testified that, while the Roelofs controversy was going on, the customers of the firm were visited by the advertising agents (4-pp. 743, 1744), but what they said and did, on these visits, is not stated.

In a report by Mr. Moffitt in the Journal for November, 1901, it is stated that the Executive Board of the United Hatters had

> "sent out four agents to different parts of the country where the Roelofs hats are most in demand, and I desire to say that the efforts of our agents have been very gratifying to those in charge of the strike" (5-p. 1744).

In the Journal for January, 1902, there is a statement that the defendant Daniel P. Kelly, then an advertising agent, went "to Seattle to post union men upon the products of Henry H. Roelofs & Co., hatters, makers of the much-bought Youman's hat" (2-p. 403).

In a report by President Moffitt in the Journal for February, 1902, it is stated that the Executive Board "sent out four agents to different parts of the country where the Roelofs hats are most in demand" (2-p. 406).

In the Journal for March, 1902, there is an item stating that Agent Kelly had "just departed for the South after a vigorous effort on behalf of the union label" and concluding as follows: "Rest assured that he proved himself greatly detrimental to the interests of Henry H. Roelof & Co." (2-p. 412; 5-p. 1745). And in the same issue there is a report by Agent Kelly stating that he had completed a very successful campaign against the Roelofs goods (5-p. 1747) But it does not appear that Kelly did anything more than "to post union men upon the products of Henry H. Roelofs & Co."

In the Journal for August, 1902, there is a report by Agent Hennelly wherein it is stated that "now that the factory of Henry H. Roelofs & Company has been unionized, we should be just as anxious to encourage the sale of their goods as we were to discourage them prior to the unionizing of the factory, through our agents and otherwise" (5-p. 1750), showing clearly that, by means of the agents and otherwise, there had been an effort to discourage the sale of the Roelofs goods.

In their efforts to adertise the union label and to discourage the sale of the Roelofs hats the adertising agents visited labor unions in different parts of the country to acquaint the members with the label and to urge them to withdraw their patronage from the Roelofs and other non-union goods.

In a report by President Moffit,which was published in the Journal for February, 1902, it is

stated: "In carrying on this fight we have been enabled, through the convention of the American Federation of Labor, to enlist the sympathies of all organizations connected with that body" (2-p. 407).

Agent Murphy, according to a report by him in the Journal for March, 1902, visited labor unions in Buffalo, and induced them to adopt resolutions requesting retail dealers not to handle the Roelofs hats and to send copies of these resolutions to dealers (2-pp. 415, 416). He named a large number of organizations which he had visited (2-p. 415). Agent O'Haire, according to a report by him in the same issue of the Journal, visited a number of labor organizations in Nashville, Tennessee, and succeeded in having committees appointed from each of them to assist him in his work (2-p. 416). There are similar reports by Agent Hennelly in the Journal for April, 1902 (2-pp. 419, 421), by Agent (defendant) Kelly in the Journal for May, 1902 (2-pp. 423, 424, 425), by Agent O'Haire in the same issue of the Journal (2-p. 426). There are still other reports of this kind by the advertising agents but they need not be referred to specifically, since the above are typical.

To establish the allegations of intimidation, threats and coercion, the attorneys for the plaintiffs have made much of these visits, and have laid emphasis upon such statements as this in the report of O'Haire from Memphis, Tennessee:

> "In visiting the different unions here I have had the pleasure of giving Roelofs and Youman hats a pair of black eyes and a broken nose" (2-p. 426).

But what follows immediately after this brag shows how the "pair of black eyes and broken

nose" were given to Roelofs hat and the Youman hat, which was made by the Roelofs company. The report, which was published in the Journal for May, 1902, continues as follows (2-p. 426):

> "Upon the conclusion of my remarks before one union, which has been but a short time, organized, it was found that the members, thirty in number, were purchasing the Roelofs hats exclusively. They readily admitted that the Roelofs were being bought under the impression that it was union made. One of the members asked if this shop was an open one; I replied, 'not for union men.' He then stated that he was told by Roelofs' agent that we had men working in the factory since last August, and that the hat was union made. Having been properly enlightened upon this point and the existing trouble between our organization and this concern, resolutions were passed promising not to purchase hats unless they contained the United Hatters' label, offering us all the assistance in their power and thanking me for the information given them. This ought to prove especially effective in causing Mr. Leidy, the concern from whom the above union purchased their hats, and which handles the Roelofs hats almost exclusively, to realize more fully the value of handling union made hats".

Surely, if, as we contend, members of organized labor have the right to withdraw their patronage from any particular maker of hats or from all non-union products, the agents of the United Hatters had a right to accomplish that which is recorded here as "giving a black eye and broken nose" to the Roelofs hats.

Similar to this fragment from the record, the meaning of which we fortunately have been able to explain, is another, of which counsel have also

attempted to make much, to the effect that Agent Kelly, who is a defendant, "proved himself greatly detrimental to the interests of H. H. Roelofs & Company" in San Francisco (2-p. 412). How, and by what means, he "proved himself greatly detrimental" does not appear.

Dealers in hats were visited by the agents and, in some cases, by committees from local unions who had been appointed at the instance of the agents, and told about the union label and the controversy between the Roelofs company and the United Hatters, advised of the attitude of organized labor toward the Roelofs and other non-union goods, and requested not to deal in these non-union Roelofs hats.

In the Journal for March, 1902, there is a report by Agent O'Haire, apparently from some place in the South, in which O'Haire states that he had visited several labor organizations and succeeded in having committees appointed from each of them to assist him in his work, that the stores there, save one, agreed to place no more orders for those (evidently Roelofs) goods until the strike is settled, and that the local central body would take up the fight against that store (5-p. 1746-1747). This, of course, shows that O'Haire was trying to prevent the sale of Roelofs' goods, but it does not show that the coercive means were employed as alleged in the complaint.

The record abounds with similar, and equally futile, extracts from the reports of the advertising agents. In the Journal for April, 1902, there is a report by Agent Daniel P. Kelly, who is a defendant, from San Antonio, Texas, wherein he said: "Found three merchants handling Roelofs goods and two of the merchants without hesitating promised to discontinue their patronage

until the house had squared itself with the hatters. With the third, I was asked to give a little time for an answer. This firm, however, is a very small concern, and has little union patronage" (2-p. 422). In the Journal for May, 1902, there is another report by Kelly, from San Francisco, stating that he "found twenty stores handling more or less of R's goods, but all promised to discontinue" (2-p. 425).

However, there is so much of this sort of material in the record that we shall not attempt to set forth all of it, but simply refer to the places in the record where it is to be found, as follows: 2-pp. 406, 407, 414, 416, 420, 425, 428 to 430, 441, 442, 444, 447, 449, 450, 452, 453.

It clearly appears from many of these extracts from the reports of the advertising agents that the reason why the dealers who agreed to discontinue the Roelofs hats did so was that they were anxious to hold the union trade. For example, in a report by Agent Murphy from Buffalo, dated February 23, 1902, and published in the Journal for March, 1902, Mr. Murphy, after naming a large number of merchants whom he had visited, said (2-p. 414):

> "Buffalo is thoroughly organized, and since all of the above mentioned dealers depend upon the laboring class for the greater part of their trade, I feel confident that I shall be successful in inducing them to not only write to Roelofs and request that he place the label in his hats, but also, if necessary, to give up handling the goods."

The word "boycott" is employed in connection with the work of the agents (5-p. 1744) but the record fails to show the sense in which the term is employed. Martin Lawlor testified that there was a boycott in the Roelofs case (5-p. 1869), but,

as we have seen (*supra*, pp. 127, 128), when he attempted to explain what he meant by the term, the court peremptorily refused to let him do so.

Distribution of Circulars.—As a part of the fight waged by the hatters' union against this non-union firm, circulars were freely distributed.

In the report by President Moffitt to the 1903 convention of the United Hatters it is said (2-p. 37):

> "Literature and correspondence were used freely in the campaign and wherever Roelofs hats reached the market appeals were made to those with whom the firm did business to aid in our fight for principle by demanding the union label in all hats they bought and sold. In nearly every section these appeals met with hearty and willing response."

In a letter by the defendant Shalvoy in the Journal of the United Hatters for January, 1902, it is stated that circulars were sent out to the labor organizations throughout the country, calling attention to the Roelofs and other non-union hat factories (2-p. 91).

In a report by President Moffitt published in the Journal for February, 1902, it is stated that when he was placed in charge of the Roelofs fight, without unnecessary delay, he "notified the labor organizations of the country of the strike" by issuing a circular, of which, at that time, upward of ten thousand copies had been sent out. Then follows a copy of the circular which contains no suggestion of the employment of the unlawful means alleged in the complaint; for the only means of combating the Roelofs firm suggested is the withdrawal of patronage by organized labor and the friends of organized labor from the product of the Roelofs factory, as is shown by the concluding

paragraph of the circular which reads as follows (2-p. 406):

> "To aid in the successful prosecution of this struggle against the greed and tryanny of this firm, we urge, in the name of organized labor, that union workmen and all friends of labor unionism, fair wages and skilled workmen, will co-operate with us by refusing to buy, sell or wear the product of the Roelof hat factory until such time as the present strike is satisfactorily settled, and the firm of Henry H. Roelof & Co. agrees to treat its employees with fairness and consideration."

Suit by Roelofs & Co.—In January, 1902, a suit was commenced by Roelofs & Co. to recover damages in the amount of $250,000. This appears by a report by President Moffitt to the 1903 convention of the United Hatters (2-p. 39) and by news items in the following newspapers: *Danbury Evening News* for April 9, 1902 (4-p. 1124), for April 10, 1902, (4-pp. 1124 to 1126) and for May 30, 1902, (4-p. 1126); *South Norwalk Evening Sentinel* for April, 10, 1902 (4-pp. 1137, 1138) and for June 2, 1902, (4-p. 1138).

But since this suit was not prosecuted to a judgment, but discontinued, by the plaintiffs (see, *infra*, pp. 187-189), and since we are not now discussing errors in admitting evidence, we content ourselves with a bare reference to the bringing of this suit for the sake of completeness.

Settlement of Controversy.—After having continued for a period of about 14 months, the Roelofs controversy was settled, about the middle of July, 1902, by the execution, at Philadelphia, of an agreement between the Roelofs firm and the hatters, establishing union conditions in the factory (2-pp. 37, 42, 91; 3-pp. 642, 655; 4-1126; 5-pp. 1747, 1833, 1835).

Connection of the American Federation of Labor with the Berg and Roelofs Controversies.

The plaintiffs sought to prove that the United Hatters enlisted the aid of the American Federation of Labor in the prosecution of boycotts against Berg & Co. and Roelofs & Co. of the coercive character alleged in the complaint.

On December 12th, 1899, a convention of the American Federation of Labor adopted resolutions which recited, among other things, the existence of a strike at the Berg factory to enforce union conditions, approved of the course of the United Hatters, called upon all unions affiliated with the Federation to give all assistance possible to the United Hatters in the unequal fight which they were making and pledged the members not to patronize any dealer or dealers who handled "the product of non-union hatters, and more particularly the product of the firm of F. Berg & Co." (2-pp. 7, 8, 28, 29, 182; 5-p. 1754).

The report of the proceedings of the 1901 convention of the American Federation of Labor held at Scranton, Pa., show that there were adopted, at the convention, resolutions reciting that there was a strike in the factory of Henry H. Roelofs & Co., that the strike had then lasted about four months at a great expense to the strikers, that the United Hatters had never refused assistance, financially or otherwise, to their brethren who asked it, resolving that the convention endorse the course pursued by the United Hatters in the Roelofs controversy, and concluding as follows (2-p. 61; 5-p. 1753):

> "Resolved that we will call upon all International, National and Local Unions, affiliated

> with the American Federation of Labor, to give all the assistance possible to the United Hatters of North America in the unequal fight they are at present so manfully making against wrong and oppression, and we hereby pledge ourselves not to patronize any dealer or dealers who handle the product of non-union hatters, and more particularly the product of the firm of H. H. Roelofs & Co. of Philadelphia, Pa."

And in the American Federationist for February, 1902, there is a notice, dated January 3, 1902, signed by the president of the American Federation of Labor, and addressed "to All Affiliated Unions" stating that Henry H. Roeloff & Co., Philadelphia, Pa., among other concerns, had been declared unfair, and concluding as follows: "Secretaries are requested to read this notice at Union meetings and labor and reform press please copy" (2-pp. 183, 184). In his report to the 1903 convention of the United Hatters President Moffitt claimed part of the credit for the adoption of this resolution (2-pp. 38, 39).

But there is here no proof of boycotts by the American Federation of Labor which involved the intimidation, threats and coercion alleged in the complaint.

There was a boycott of each of these companies, but the boycott was neither of the kind alleged, nor of a kind which violates the statute against restraint of interstate commerce.

This is established by the case of *Anderson* v. *United States*, 171 U. S. 604.

In that case the parties were engaged, or were assumed for the purpose of the decision to be engaged, in interstate commerce. The statement of the case describes the Kansas City stockyards as located partly in Kansas and partly in Missouri,

as being "the largest live stock market in the world," that the rules in question were enforced by the imposition of fines, and that the object was to prevent traders from buying and selling cattle in said stockyards who declined to become members of the exchange.

The affidavits, of which the substance is set forth on pp. 608, 609, show that the boycott was accompanied by notifications to affiants that they could not continue in business unless they became members of the association; that when they went into the yards to buy cattle some of the defendants would call the salesman aside, and, after having a conversation with the salesman, the latter would invariably refuse to sell, and say that he had been warned by members of the exchange not to do so, and that, in case commission firms made sales to traders not members of the association after being warned not to do so, the "Association and members thereof would boycott the commission firm making such sales."

These affidavits, which were uncontradicted so far as the substantial fact of refusal to deal with yard traders who would not join the association and with commission merchants who dealt with such non-union traders, establish not only a primary but a secondary boycott, which cannot be distinguished on principle from the action of the American Federation of Labor in endorsing and publishing the boycotts which were paraded in the present case as evidence of a preauthorization of the conspiracy alleged in Paragraph 20.

No evidence whatever was offered in respect of these boycotts of the Berg and Roelofs companies by the American Federation of Labor to distinguish them in principle from that described in *Anderson* v. *United States*.

Much less was there any evidence of any intent on the part of the persons who instituted such boycotts so endorsed by the American Federation of Labor to restrain interstate commerce.

But the important consideration is that, as the foregoing review of the evidence relating to the Berg and Roelofs controversies shows, no evidence was offered to show that these boycotts were of the kind alleged in the complaint.

The legality of declarations of unfairness, similar to these, has been discussed above (pp. 103-110), and we shall not add to that discussion here.

Duty of Court to Exclude Question of Precedent Authorization from Case.

Because of the complete failure of the plaintiffs to prove the allegations in paragraphs 16 and 17 of the complaint the trial court, in charging the jury, should have excluded the question of antecedent authorization from the case.

But, as we shall now see, the court made this question very prominent in the charge.

ASSIGNMENT OF ERROR NO. 19.

The circuit court of appeals erred in holding that the district court properly charged the jury as set forth in *Nineteenth Assignment of Error*, as follows:

NOW IF THIS EVIDENCE FALLS SHORT OF SATISFYING YOU THAT CERTAIN OF THESE DEFENDANTS DID KNOW OF THIS UNLAWFUL CONSPIRACY, OR WERE IN DUTY BOUND TO KNOW OF IT, OR DID TACITLY APPROVE OF IT, THEN SUCH DEFENDANT SHOULD BE ACQUITTED, IF ANY THERE BE; OR, IN OTHER WORDS, ASSUMING THAT

THERE WAS A CONSPIRACY TO VIOLATE THE FEDERAL STATUTE, AS I HAVE EXPLAINED TO YOU, AND THAT THE STATUTE WAS, IN FACT, VIOLATED TO THE DAMAGE OF THE PLAINTIFFS, THEN EVERY PERSON WHO HAD A PART IN PLANNING OR A HAND IN EXECUTING OR AIDED, OR ABETTED THEREIN, IS JOINTLY LIABLE. MEMBERSHIP IN A LABOR UNION, AND THE PAYMENT OF DUES, ARE NOT ACTS OF THEMSELVES THAT NECESSARILY CONSTITUTE COUNSELLING, ADVISING, AIDING OR ABETTING. MEMBERSHIP AND PAYMENT OF DUES ARE THE LIFE OF THE VOLUNTARY ASSOCIATION, AND ARE THE FOUNDATION OF ALL ITS AUTHORITY AND THE SOURCE OF FINANCIAL ASSISTANCE IN EXECUTING THAT AUTHORITY.

IF THESE MEMBERS PAID THEIR DUES AND CONTINUED TO DELEGATE AUTHORITY TO THEIR OFFICERS AND AGENTS TO COMMIT UNLAWFUL DEEDS, WHICH, IN THIS CASE IS THE INTERFERENCE WITH THE PLAINTIFFS' INTERSTATE TRADE AND COMMERCE, UNDER SUCH CIRCUMSTANCES AS LEAD YOU TO BELIEVE THAT THEY KNEW OR OUGHT TO HAVE KNOWN, AND THAT SUCH OFFICERS AND AGENTS WERE IN THAT MATTER WARRANTED IN THE BELIEF THAT THEY WERE ACTING WITHIN THEIR DELEGATED AUTHORITY, THEN SUCH MEMBERS ARE JOINTLY LIABLE AND NO OTHERS. *Assignment of Error No. 19*, 5-p. 1935.

It should be remembered that this charge was closely preceded by the following (1-p. 417, fol. 1667):

> "In passing upon the individual claims of these several defendants, it is important that you should consider the language of the constitution and by-laws of the several associations, and the supplemental proof that, in carrying out the objects thereof, unlawful means had been so frequently used, with the express or tacit approval of the association, that its agents were warranted in assuming

> that they might use such lawful means in the future and that the association and its individual members would approve of or tolerate such use whenever the end sought to be obtained might be best obtained thereby."

To this part of the charge we have no assignment of error. It is referred to here merely because it shows the meaning which the jury might have given to the charge which is the subject of the assignment of error which we are now discussing.

In connection with the language just quoted, the part of the charge which is assigned as error clearly submitted to the jury the question of antecedent authorization, although, as we have seen, there is no evidence in the record upon which to base antecedent authorization.

But we have said all that can be said as to this, and shall confine ourselves to other objections to which the charge is open, even if our view that there is no evidence of the illegal acts alleged in the complaint in connection with contests between the United Hatters and manufacturers of hats prior to the trouble with the plaintiffs is not accepted.

Even if there were evidence to establish the general scheme alleged in paragraphs 16 and 17 of the complaint, *no defendant can be held liable in this action without proof that he participated in, or had knowledge of, that alleged conspiracy, or unless there is proof that he participated in, or had knowledge of, the alleged conspiracy of July 25, 1902, against the plaintiffs, which is described in paragraph 20 of the complaint.*

We have seen that the appointed duty of the advertising agents was "advertising the union label and fighting the sale of non-union made hats"

(*supra*, pp. 38, 39), that the only basis, if there is any basis, for finding that there was a conspiracy, such as is alleged in the complaint, to injure the interstate trade of the plaintiffs is the acts of Mr. Moffit and the advertising agents under his control done after the controversy with the plaintiffs was placed in charge of Moffitt (*supra*, p. 39) and that none of the defendants, except Daniel P. Kelly, participated in the campaign against the plaintiffs conducted by Moffitt and the advertising agents (*supra*, p. 111).

There must, therefore, be something to bring these acts home to the defendants in order that they may be held responsible for them and be held to have been parties to the alleged conspiracy. As was said in the case of *Benton* v. *Minneapolis Tailoring, etc. Co.*, 73 Minn. 498, at page 506:

> "A man cannot be associated with others in a conspiracy, civil or criminal, or be held guilty of acts done in pursuance of such association, merely because his agent may have knowledge of the same, or be a participant therein. He cannot enter into a combination of two or more persons to accomplish by concerted action some demand or unlawful purpose, or to accomplish some purpose not criminal or unlawful in itself, by criminal or unlawful means, simply and solely because of the mental condition or physical acts of his agents."

The United Hatters is a legal association organized for lawful purposes and, therefore, membership therein cannot alone make a member liable for the unlawful acts of some of its officers and agents.

Judge Coxe, in delivering the opinion of the circuit court of appeals when this case last came

before that court (*Lawlor* v. *Loewe*, 209 Fed. 721, 728), compared the liability of these defendants to the liability of directors of a corporation for the acts of its officers. But Martin Lawlor is the only defendant as to whom this analogy, in a measure, holds good. He was a vice-president of the United Hatters. But none of the remaining defendants were officers of the United Hatters. A few of these defendants were officers of local unions in Danbury, Bethel and South Norwalk, but the great bulk of the defendants were merely members of these local unions. And the only connection of these local unions with the campaign conducted by Mr. Moffitt and the advertising agents is that they were affiliated with the United Hatters.

In these circumstances the liability of the defendants, with the exception of Lawlor, may more properly be compared to the liability of stockholders for the acts of officers and agents of a orporation. Or their liability may be compared with the liability of a partner for acts of co-partners outside of the scope of the partnership. In *United States* v. *Cohen*, 128 Fed. 615 (affirmed 145 Fed. 1, writ of certiorari denied, 200 U. S. 618) District Judge Thomas in effect said (p. 618) that where, in a trial of a member of a firm for conspiracy to defraud the customs revenue, there is proof that his firm was concerned in such conspiracy, it is not mere partnership in the firm, nor relation to some acts that the law required to be done in the course of passing goods through the custom house, that is demanded to show guilty connection with the conspiracy; it must inevitably appear that such connection was used, or such relation assumed, for the purposes of subserving the conspiracy.

That membership in, and payment of dues to, the hatters' union are not alone sufficient to charge the defendants with liability for the wrongful acts of the officers and agents of the union was pointed out when this case came before the circuit court of appeals after the first trial. *Lawlor* v. *Loewe*, 187 Fed. 522. Judge Lacombe, in delivering the opinion of the court, said (p. 526):

> "It has been argued here that the mere fact that any individual defendant was a member of and contributed money to the treasury of the United Hatters' Association made him the principal of any and all agents who might be employed by its officers in carrying out the objects of the association, and responsible as principal if such agents used illegal methods, or caused illegal methods to be used, in undertaking to carry out those objects.
>
> "We cannot assent to this proposition. The clause of the constitution of the United Hatters which provides that certain of its officers 'shall use all the means in their power to bring such shops (*i. e.* non-union shops) into the trade' does not necessarily imply that these officers shall use other than lawful means to accomplish such object. Surely the fact that an individual joins an association having such a clause in its constitution cannot be taken as expressing assent by him to the perpetration of arson or murder."

The part of the charge now being considered contains the statement that "membership in a labor union and the payment of dues are not acts of themselves that necessarily constitute counselling, advising, aiding or abetting". The use of the word "necessarily" is objectionable in that it may have inclined the jury to believe that they might find that membership and the payment of

dues constituted "counselling, aiding and abetting" a conspiracy—not that they necessarily amounted to that, but they might. Immediately after making this statement the court laid emphasis upon membership and payment of dues by saying that "membership and payment of dues are the life of the voluntary association, and are the foundation of all its authority and the source of financial assistance in executing that authority". Is not this is a strong intimation that membership and payment of dues are of great importance in determining the liability of the defendants—that there could have been no conspiracy but for these things for which the defendants, with all other members of unions affiliated with the United Hatters, are of course responsible?

Not content with this, the court began the very next sentence as follows: "If these members paid dues and continued to delegate authority to their officers to commit unlawful deeds", etc. We submit that, even though the court made the statement that membership and payment of dues did not "necessarily" constitute counselling, etc., the employment of word "necessarily" and the great emphasis which was placed upon the matter of membership and payment of dues were calculated to mislead the jury to the prejudice of the defendant.

The court should rather have emphasized the fact that individual defendants could only be liable if they participated in, or had knowledge of, and, having knowledge, acquiesced in, the conspiracy.

We, therefore, submit that the jury should have been unequivocally instructed that membership in, and payment of dues to the hatters' union did not make the defendants parties to the alleged conspiracy.

Just as the court emphasized the matter of membership and payment of dues, so it minimized the matter of knowledge and acquiescence by the defendants.

Just before the sentences which have been quoted the court charged the jury as follows:

> "Now, if this evidence falls short of satisfying you that certain of these defendants did know of this unlawful conspiracy, or were in duty bound to know of it, or did tacitly approve of it, then such defendants should be acquitted, if any there may be."

The court here said in effect that "if this evidence falls short of satisfying you that certain of these defendants did not know of this unlawful conspiracy you need not acquit them for that reason; you must go further and inquire whether they were in duty bound to know of it, and, if you so decide, they must be held." So that, according to this instruction, it made no difference whether the plaintiffs proved that the defendants had any information on the subject or not. It made no difference that the defendants, as most if not all of them did, absolutely denied having any such information, even if the jury believed their denials; this was of no consequence provided the jurymen could, out of their inner consciousness, spell out the notion that the defendants ought to be bound by the conspiracy and that they were in duty bound to know of it whether they did knew or not. In other words, this was the equivalent of charging that even if the protestations of the defendants that they had no knowledge of illegal acts were true, nevertheless, if the jury should find that they were in duty bound to know of such acts they were liable.

After giving the instructions as to membership and payment of dues, the court again referred to the duty of knowing, connecting the instruction with the payment of dues, in the following language:

> "If these members paid their dues and continued to delegate authority to their officers and agents to commit unlawful deeds, which, in this case, is the interference with the plaintiffs' intestate trade and commerce, under such circumstances as lead you to believe that they knew, or ought to have known, and that such officers and agents were, in that matter, warranted in the belief that they were acting within their delegated authority, then such members are jointly liable, and no others".

What this duty or obligation consists of was left entirely to the jury to determine for itself; no guidance was afforded it by the court.

And, not only is there a total absence of any attempt by the court to define or explain this duty, but the language which we are now considering is closely connected and interwoven with the language, which we have quoted and considered above, as to the bearing of membership in the hatters' union with payment of dues upon the liability of the defendants for the alleged conspiracy. May not the jury have been led to believe that such membership and payment of dues was sufficient to impose a duty of knowing at least upon some of the defendants who denied knowledge?

It seems to us that these instructions as to the defendants who "ought to have known", given just before and just after the emphasis which the court laid upon membership and payment of dues, may at least have conveyed to the jury the im-

pression that membership and payment of dues would justify finding a particular defendant or particular defendants liable, even though without knowledge of the conspiracy, unless it was established, in his or their defense, that there were special circumstances which created an exemption from the duty of knowing—that membership and payment of dues did not "necessarily" make a particular defendant liable, for there might be special circumstances exempting him from a duty to know, but that, in the absence of such circumstances, he might be held liable because of his membership and payment of dues.

This means that a person may be held liable in threefold damages for injuries resulting from an unlawful conspiracy in which he has not participated and although he has no knowledge either of the original plan or of overt acts done in pursuance of that plan. It means that, if a very few officers or agents of a labor union, such as the United Hatters, step aside from their appointed duties and enlist in an unlawful conspiracy, every member of that union, no matter how remote he may be from the scene of the unlawful activities, is personally liable in threefold damages to anyone who may be injured by the conspiracy.

It means, too, that they may be held liable criminally as well as for damages. The Anti-Trust Act of July 2, 1890, is essentially a criminal statute, and none of the defendants can be liable for damages under the seventh section of the Act, unless he ought to be fined or imprisoned, or both, under section 1 of the Act. See, *supra*, p. 68.

Such a responsibility has never before been placed upon the members of any association, incorporated or voluntary.

If this is the law, then the premeditated and procured disloyalty of a few officers and agents of such a union to the union may be employed as a means of utterly destroying it.

ASSIGNMENT OF ERROR NO. 16.

The circuit court of appeals erred in upholding the refusal of the district court to charge as requested in the sixteenth request to charge, which is as follows:

16. IF YOU FIND THAT THERE WAS SUCH A COMBINATION OR CONSPIRACY AS THE COURT MAY CHARGE YOU IS SUFFICIENT BASIS FOR THIS ACTION, THEN THE QUESTION OF THE PERSONAL RESPONSIBILITY IN DAMAGES OF ANY DEFENDANT IN THIS ACTION WILL DEPEND UPON WHETHER HE CONSCIOUSLY AND INTENTIONALLY PARTICIPATED IN, OR AUTHORIZED SUCH COMBINATION. *Assignment of Error No. 16*, 5-p. 1934.

Had this charge been given, that might, perhaps, have tended to decrease the prejudicial effect of the charge which the court gave as to membership of the defendants in the United Hatters and payment of dues and as to the duty of the defendants to know of the alleged conspiracy. But it was refused, although, as we have seen (*supra*, p. 116), the request was submitted to the court prior to the argument of counsel, so that there was ample opportunity to incorporate it in the written charge to the jury.

In view of the discussion above it seems unnecessary to elaborate upon the error in refusing to give this charge.

ASSIGNMENT OF ERROR NO. 18.

The circuit court of appeals erred in upholding the refusal of the district court to charge as requested in the eighteenth request to charge, which is as follows:

18. IF YOU FIND AS TO ANY DEFENDANT OR DEFENDANTS THAT THEY HAD NEVER HELD OFFICE IN ANY LOCAL OR NATIONAL UNION AND WERE NEVER DELEGATES TO ANY CONVENTION; THAT THEY HAD NO INFORMATION OF ANY TROUBLE IN THE LOEWE FACTORY UNTIL AFTER THE MEN WERE OUT; THAT THEY WERE NOT REGULAR READERS OF THE JOURNAL OF THE UNITED HATTERS AND DO NOT REMEMBER READING THE PRINTED REPORTS OF THE CONVENTIONS OF THE UNITED HATTERS; THAT ACCORDING TO THEIR BEST RECOLLECTION THEY DID NOT KNOW PRIOR TO THE COMMENCEMENT OF THIS ACTION THAT THE OFFICERS OR AGENTS OF THE UNITED HATTERS HAD FOLLOWED, OR WERE CHARGED WITH FOLLOWING, THE CUSTOMERS OR GOODS OF ANY HAT MANUFACTURER IN OTHER STATES FOR THE PURPOSE OF RESTRICTING OR PREVENTING THE SALE OF SUCH MANUFACTURERS' HATS; THAT TO THE BEST OF THEIR RECOLLECTION THEY NEVER READ IN THE HATTERS' JOURNAL, OR ELSEWHERE, ANY STATEMENTS TO THAT EFFECT; THAT THEY WERE NOT REGULAR ATTENDANTS AT THE MEETINGS OF THEIR RESPECTIVE LOCAL UNIONS, AND TO THE BEST OF THEIR RECOLLECTIONS, WERE NOT PRESENT AT ANY MEETING WHERE THE PROCEEDINGS OF CONVENTIONS WERE REPORTED ON, OR THE BERG OR ROELOFF TROUBLES REPORTED ON OR DISCUSSED; THAT TO THE BEST OF THEIR RECOLLECTION THEY NEVER HEARD OF THE SUIT BROUGHT BY ROELOFF AGAINST THE UNITED HATTERS; THAT THEY KNEW THERE WERE AGENTS OF THE UNITED HATTERS ON THE ROAD, BUT SUPPOSED THAT THEY WERE EMPLOYED TO ADVERTISE THE UNION LABEL AND PROMOTE THE SALE OF UNION-MADE HATS;

THAT THOSE OF THEM WHO LIVED IN DANBURY RECEIVED THE NOTICE, EXHIBIT 86; THAT AFTER THIS SUIT WAS BROUGHT THEY RECEIVED THE LETTER FROM MR. CONNOLLY RELATIVE TO EMPLOYMENT OF COUNSEL AND SIGNED AND RETURNED THE FORM ANNEXED THERETO (SAID LETTER AND FORM BEING THE SAME AS HAS BEEN READ IN TESTIMONY FROM DANBURY NEWS OF SEPTEMBER 14TH, 1903), THAT FROM 1900 TO 1903 THEY READ WITH MORE OR LESS REGULARITY SOME LOCAL NEWSPAPER IN THEIR RESPECTIVE TOWNS, BUT NOT COMPLETELY OR INVARIABLY; AND TO THE BEST OF THEIR RECOLLECTION, THEY DO NOT REMEMBER READING ANYTHING THEREIN OR ELSEWHERE ABOUT THE METHODS EMPLOYED TO CONSTRAIN MANUFACTURERS TO UNIONIZE THEIR SHOPS; THAT THOSE OF THEM WHO TESTIFIED AT THE FORMER TRIAL WERE PAID BY THE UNITED HATTERS FOR THEIR TIME AND EXPENSE IN ATTENDING AS WITNESSES; AND THAT AFTER THIS SUIT WAS BROUGHT THEY CONTINUED TO PAY DUES AND MADE NO PROTEST, AND DID NOTHING TO PREVENT, THE RE-ELECTION OF THE SAME OFFICERS AS BEFORE, THEN YOUR VERDICT SHOULD BE IN FAVOR OF SUCH DEFENDANT OR DEFENDANTS. *Assignment of Error No. 18*, 5-pp. 1934, 1935.

What we have heretofore said as to the knowledge of illegal acts that is necessary to charge individual defendants with liability in this action seems to be all that is needed in support of this assignment of error, except that some explanation of the meaning of the requested instruction and its application to the case should be given.

This request bears upon the liability of 115 of the 186 defendants.

After a large number of the defendants had testified, counsel entered into a stipulation reciting what would, in effect, be the testimony of 115 defendants, whose names are annexed to the stip-

ulation, should they be called as witnesses (5-pp. 1696 to 1698).

This stipulation and the request to charge which we are now considering are identical, if we eliminate from the request the introductory words, "If you find as to any defendant or defendants," and the concluding words, "Then your verdict should be in favor of such defendant or defendants."

Most of contents of this stipulation relate to matters which have been considered in the foregoing review of the evidence in the case, but there are a few clauses which call for special comment here.

The statement that these defendants "were not regular readers of the Journal of the United Hatters and do not remember reading the printed reports of the conventions of the United Hatters" is based upon the claim of the plaintiffs that these Journals and reports contain information of the illegal acts alleged in the complaint in connection with the controversy with plaintiffs and the earlier controversies with the Berg, Roelofs and other hat manufacturers, and that the defendants had knowledge of this information.

While the contents of these Journals and reports of convention proceedings have been set forth to a large extent in the preceding pages, the exact application of this requested charge will be more fully understood by referring to parts of what we say later as to the errors of the trial court in admitting these Journals and reports in evidence, and which we omit here for the purpose of saving unnecessary repetition. See, *infra*, p. 193.

The statement in the stipulation that "those of them who lived in Danbury received the notice, Exhibit 86" refers to a "warning notice" which the plaintiffs, in the latter part of September,

1902, caused to be printed and sent by the mails to all hatters whose names appeared in the current Danbury Directory (3-pp. 718 to 725). This notice reads as follows (3-p. 720):

> "Warning: To the members of all labor unions: Notice is hereby given that the undersigned will hold each and all the members of all labor unions individually and collectively responsible for all damages which we may sustain in our property or business by reason of the unlawful acts of such labor unions or any of the officers or agents thereof. Dated at Danbury, Conn., August 23rd, 1902. D. E. Loewe & Co.
>
> The foregoing notice is issued in order that all members of unions may be informed as to their individual liability for the unlawful acts of the unions or officers or agents of the unions, whether said acts meet with the approval or disapproval of the individual members of the unions. D. E. Loewe & Co."

This notice, it will be seen, contains no information that there had been any unlawful acts or that any such acts were contemplated.

Surely the receipt and reading of this "Warning" by a defendant could not charge him with knowledge of the unlawful acts alleged in the complaint and make him liable in this action. Hence the requested instruction could not properly be refused because it contained this clause.

The next clause that calls for explanation is the statement that "after this suit was brought they received the letter from Mr. Connolly relative to employment of counsel and signed and returned the form annexed thereto," etc.

This letter and form of reply, which should not, of course, have been admitted in evidence over the general objection of the defendants which the court had allowed, are both too long to be quoted.

But a reference to the text (4-pp. 1354, 1355) will show that the one is simply a statement that the United Hatters would defend the action on behalf of each of the defendants, and the other is an authorization to do so, which was to be executed by each of the defendants.

Neither of these remarkable, but, in this case, not unprecedented, pieces of evidence, contain the slightest hint of the alleged illegal acts having been done.

Therefore they cannot, of course, show knowledge by the defendants before the suit was brought, nor even after.

We strongly suspect that the presence of this clause in the request to charge cannot make the whole request objectionable. Indeed we feel that the trial court should have been eager to submit the statement to the jury, in an effort to correct the error that was committed when the letters upon which the statement is based were admitted in evidence.

There do not seem to be any other statements in this request which demand explanation here, but, if there are, later sections of this brief will make their meaning and application clear.

We submit that the statements in this request, if found to be true by the jury, called for a verdict in favor of each of these 115 defendants, and that the jury should have had the legal effect of these facts presented to it. None can say that the jury did not find all the recitals in this request, and in the stipulation upon which the request is based, to be true, and that it did not find a verdict against these defendants (as well as other defendants similarly situated) because, following the terms of the charge which the court gave, it thought, for one unknown reason or another, that these and

other defendants "were in duty bound to know" or "ought to have known" what had been done.

III.

Errors in Admission of Evidence.

The errors of the trial court in admitting evideence are so numerous that it has been a practical impossibility to make the assignments of error cover all of them; the assignments are necessarily limited to illustrative examples.

GENERAL CONSIDERATIONS.

We shall premise our discussion of these assignments by a few references to the record showing the attitude of the court in admitting, over objections by the defendants, evidence which the plaintiffs offered, and by references to the decisions of this Court which bear upon the presumption of prejudice to the complaining party from erroneous rulings upon the admission of evidence.

Attitude of the Court.

Just as the trial court was niggardly in giving the instructions requested by the defendants and hostile to the defendants in the instructions which were given, so it was prodigal in its liberality in admitting evidence offered by the plaintiffs.

It is a remarkable and significant fact that, while the plaintiffs have no more than perhaps four exceptions to the rulings of the court upon the

admission of evidence and those of little consequence, as may readily be seen (2-pp. 55, 56, 4-p 1004), the defendants have at least 170. And not only this; many of these exceptions were general exceptions, expressly allowed and sometimes insisted upon by the court to prevent interruption in the taking of the testimony, so that the exceptions of the defendants apply to many hundreds of items of evidence.

Even a cursory examination of the record will show that this unusual and extraordinary feature of the case is due to the attitude of the court in admitting anything and everything that was offered by the plaintiffs, an attitude which was sometimes revealed by remarks of the court in admitting evidence over objection by the defendants.

For example, when the defendants objected to testimony as to the reasons given by the customers of Triest & Company for discontinuing their dealings with that firm (see, *infra*, p. 206), the court said (3-p. 643):

> "I have looked into the subject as to proof of the sales to customers of the plaintiffs, but the sales by plaintiffs' customers to their customers is a step beyond anything that I have looked into. *Now, if you feel safe to put in that class of testimony, subject to their objection, without the court looking into it any further, why you can take your risk*".

And there are other remarks in the record which show that this was the consistent attitude of the court throughout the trial (3-p. 487; 4-p. 1247).

We deem it a conservative claim when we say, as we do say and shall show so far as our assignments of error will permit, that, as a result of the admission of hundreds of items of so-called evidence having no value whatever to establish the allegations of the complaint, the issues were so

effectively obscured as to make it practically impossible for any jury to decide them, even though properly instructed.

PRESUMPTION OF PREJUDICE FROM ERRONEOUS RULINGS.

An appellate court, it is true, will not reverse on the ground of the erroneous admission of evidence, or other error, unless the error was prejudicial to the party complaining. But it has been established, in a number of cases decided by this Court, that where error is shown it is presumed to have worked injury to the party against whom it was committed, unless the contrary affirmatively appears from the record.

Vicksburg & M. R. Co. v. *O'Brien*, 119 U. S. 99;
Gilmer v. *Higley*, 110 U. S. 47.

In *Vicksburg etc. Railroad* v. *O'Brien*, 119 U. S., 99, wherein it was held that a written memorandum had been erroneously admitted in evidence, the court, by Mr. Justice Harlan, said (p. 103):

> "While this court will not disturb a judgment for an error that did not operate to the substantial injury of the party against whom it was committed, it is well settled that a reversal will be directed unless it appears, beyond doubt, that the error complained of did not and could not have prejudiced the rights of the party".

In *Mexia* v. *Oliver*, 148 U. S., 664, the court, after holding that there had been error in the admission of evidence, said (p. 673):

> "We cannot say that these errors were immaterial, as it does not appear beyond doubt

that they were errors which could not prejudice the rights of the plaintiffs. *Deery* v. *Cray*, 5 Wall, 795, 807; *Gilmer* v. *Higley*, 110 U. S., 47, 50".

It is believed that many of the items of evidence erroneously admitted on the trial of this case, considered separately, could not but have had a strong tendency to prejudice the cause of the defendants. But, in passing upon the prejudicial effect of the evidence erroneously admitted, each item should not be scrutinized separately. That is, in a case such as this, in which a great mass of incompetent and irrelevant testimony has been admitted, item after item should not be taken up separately to determine whether its admission was sufficiently prejudicial to justify a reversal. Of course, if it can be said of each item that it could have *no* prejudicial effect, then it might, in some cases, make no difference how many such items were admitted; the prejudicial effect of the admission of the testimony would depend upon whether the issues were thereby obscured. But where it is probable that each of a number of items erroneously admitted could not but have *some* prejudicial effect, though none by itself can be considered sufficiently prejudicial to justify a reversal, the total effect of these items should be considered, and a reversal ordered if it is thought that the incompetent and irrelevant testimony, taken as a whole, might have had the effect of prejudicing the jury sufficiently to deprive the defeated party of a fair trial.

TESTIMONY AS TO CONTINUED PAYMENT OF DUES BY DEFENDANTS.

Of great importance in this case, and closely connected with that part of the charge to the jury

which is the subject of *Assignment of Error No. 19* (*supra*, p. 147), is the error of the trial court in admitting testimony to the effect that the defendants continued to pay dues to the hatters' unions of which they were members after the action was commenced.

ASSIGNMENTS OF ERROR.

The circuit court of appeals erred in sustaining and upholding the action of the district court in admitting, over the objection of the defendants, the testimony which forms the subject of the *Thirty-first*, *Thirty-second* and *Thirty-third Assignments of Error*, which are as follows:

31. THAT THE COURT ERRED IN SUSTAINING AND UPHOLDING THE RULING OF THE DISTRICT COURT ADMITTING THE TESTIMONY ON CROSS EXAMINATION OF ONE NATHAN C. HOY, AGAINST THE OBJECTION AND EXCEPTION OF THE DEFENDANTS, TO THE EFFECT THAT SAID HOY, ONE OF THE DEFENDANTS, CONTINUED TO PAY LOCAL AND NATIONAL DUES, SO-CALLED, AFTER THE SERVICE OF THE WRIT IN THIS CAUSE, AND MADE NO INVESTIGATION OF THE TRUTH OF THE MATTERS SET FORTH IN THE COMPLAINT AND TOOK NO STEPS TO PREVENT THE RE-ELECTION OF THE SAME OFFICERS AS BEFORE. *Assignment of Error No. 31*, 5-p.1937.

32. THAT THE COURT ERRED IN SUSTAINING AND UPHOLDING THE RULING OF THE DISTRICT COURT ADMITTING AGAINST THE OBJECTION AND EXCEPTION OF THE DEFENDANTS, THE TESTIMONY ON CROSS EXAMINATION OF THE WITNESS BRESSON TO THE EFFECT THAT AFTER THE SERVICE OF THE WRIT AND COMPLAINT HE CONTINUED TO PAY DUES AND MADE NO EFFORT TO PREVENT THE RE-ELECTION OF THE SAME OFFICERS. *Assignment of Error, No. 32*, 5 p. 1937.

33. THAT THE COURT ERRED IN SUSTAINING AND UPHOLDING THE RULING OF THE DISTRICT COURT ADMITTING, AGAINST THE OBJECTION AND EXCEPTION OF THE DEFENDANTS, THE TESTIMONY ON CROSS EXAMINATION OF 160 DEFENDANTS MORE OR LESS, TO THE EFFECT THAT THEY CONTINUED TO PAY DUES AFTER THE SERVICE OF THE WRIT AND COMPLAINT IN THIS CAUSE; THAT THEY MADE NO INVESTIGATION AS TO THE TRUTH OF THE MATTERS ALLEGED IN THE COMPLAINT AND THAT THEY MADE NO ATTEMPT TO PREVENT THE RE-ELECTION OF THE SAME OFFICERS AS BEFORE. *Assignment of Error No. 33*, 5-p. 1937.

While specific exceptions were taken to the admission of this testimony in the course of the examination of the defendants Nathan C. Hoy (4-pp. 1244 to 1247) and Alphonse Bresson (5-pp. 1506, 1507), the court also allowed the defendants a general exception to this class of testimony (5-pp. 1506, 1507). Fifty-six defendants, in addition to Hoy and Bresson, gave their testimony.

And the last paragraph of the stipulation as to what would be the testimony of a large number of the defendants (one hundred fifteen), if they were called as witnesses, reads as follows: "And that after this suit was brought they continued to pay dues and made no protest and did nothing to prevent the re-election of the same officers as before." This paragraph of the stipulation is also subject to the defendants' general exception (5-p. 1697).

ERRORS IN ADMITTING THE TESTIMONY.

This testimony was ostensibly admitted as cross-examination bearing upon the truthfulness of the testimony in chief (4-p. 1246; 5-p. 1697).

But how does it bear upon the truthfulness of the testimony in chief? Every defendant in the case who testified denied any knowledge, before the suit was brought, of the unlawful conspiracy and of the illegal acts alleged in the complaint. And it is stipulated that the defendants who were not called would have testified likewise (5-p. 1696). The continued payment of dues is not inconsistent with this testimony. It rather tends to corroborate the testimony, for had the defendants had knowledge of illegal acts done by their officers and agents, fear of another suit, perhaps a criminal prosecution, would have inclined them to sever their relations with the organization.

But it does not follow from this that there was no error in admitting testimony of the continued payment of dues. The connection in which the testimony was admitted makes its admission a vital error.

Turning to the testimony of the defendant Hoy, we find that he was cross-examined as to whether he received the so-called "warning notice" (4-pp. 1242, 1243), which is Plaintiff's Exhibit No. 86 and has been set forth in an earlier part of this brief (*supra*, p. 161). He was then asked whether he took any steps to learn whether the charges made by the complainants against the organization were true, whether he took any steps to prevent the re-election of the same officers who were charged with the most active part in these matters (4-p. 1243), whether he made any protest against such operation by writing to the officers or otherwise, and whether he kept on paying dues after being sued (4-p. 1244).

The defendant Bresson was asked whether, after he was sued in this case, he continued a member without protest, whether he made any effort

to prevent the re-election of the same officers, and whether he continued paying dues. (5-p. 1506.)

The defendant Myron T. Morgan was asked whether he continued a member of the union after he was sued, and whether he "continued to pay dues" and "made no protest" (5-p. 1695).

And the defendant Garner was asked whether he "continued a member after this suit was started," whether he had "always been paying dues," and whether he received the "warning notice" (5-p. 1589).

These examples are fair illustrations of the cross-examination of most of the remaining defendants who were witnesses.

It is clear as need be that the purpose of counsel in this cross-examination was not to attack the credibility and reliability of the testimony in chief of these witnesses.

It is clear as need be that the purpose was to convey to the jury the idea that a defendant who had knowledge of the so-called "warning notice" and of the allegations in the complaint and thereafter continued to pay dues was, or became, a party to the alleged conspiracy.

The so-called "warning notice," as we have seen (*supra*, p. 161), contained no information that there had been any unlawful acts or that any such acts were contemplated.

The implied proposition that the defendants should sever their relations with their local unions, or attempt a reorganization of the United Hatters, because of knowledge of the allegations of the complaint is a most remarkable proposition—that is, it would be a remarkable proposition in any case but this.

The defendants did not believe that the allegations of the complaint were true; for when the time for answering the complaint came, each de-

fendant interposed an answer which, in effect, denied every material allegation of the complaint.

They even had no reason to believe, until February 3, 1908, when *Loewe* v. *Lawlor*, 208 U. S. 274, was decided, more than four years and four months after the suit was commenced, that the allegations of the complaint, even if true, stated anything illegal. A number of lawyers of learning and ability had advised that the complaint did not state a cause of action. The district court decided that it did not state a cause of action, and the circuit court of appeals was in doubt and certified the question to this Court.

The admission of this testimony, in the connection in which it was admitted, could not but have been prejudicial to the defendants in almost any circumstances—perhaps even if the court had expressly charged the jury to disregard it. But the court did not so instruct the jury in any part of the charge. On the contrary, the trial court, in its charge to jury, laid great emphasis, as we have seen (*supra*, pp. 147-157), upon membership in the hatters' union and the payment of dues by the defendants, thereby necessarily increasing the prejudicial effect of the error in admitting this testimony.

We submit that the trial court should have followed the opinion of the circuit court of appeals when the case came before that court after the first trial. *Lawlor* v. *Loewe*, 187 Fed. 522. In delivering the opinion of the court, Judge Lacombe said (p. 527):

> "Since there is to be a new trial it is desirable that the opinion of this court should be expressed on two questions as to the admissibility of evidence, which will probably arise again. The court admitted evidence of the payment of their dues to the unions by

> defendants, after complaint was served. This was incompetent as showing ratification, and, as we understand their brief, plaintiffs do not so contend. It was offered as 'tending to show that the acts (of the missionaries) were authorized at the time they were performed previous to the suit', upon the theory that otherwise the declarations made to an individual defendant by his reading of the complaint would have brought forth protest and disapproval on his part. We think it should have been excluded."

The admission of this testimony was sustained by the circuit court of appeals in the judgment to review which this writ of error is prosecuted (*Lawlor* v. *Loewe*, 209 Fed. Rep. 721; Record, vol. 5, p. 1920) on the ground, as stated in the opinion by Judge Coxe (209 Fed. Rep. p. 728, Record, vol. 5, p. 1926), that it was proper to show the relation of the witnesses (erroneously stated to be only two in number) to the parties and their attitude to the controversy. The court, by Judge Coxe, said:

> "The plaintiffs, on cross-examination, had the same right to show that the defendant was a member of the local union in good standing as the defendants would have to show that a witness called by the plaintiffs was a partner in the firm. In either case the testimony shows the jury what manner of man the witness is and what interest he has in the result".

We do not question the soundness of this proposition at all. It is elementary law. But it has no aplication to the case. All of these witnesses were defendants, as the jury well knew from the answers to the questions put to them at the beginning of their direct examination and from later answers by them in the course of this exam-

ination. And the jury knew from answers to questions asked on direct examination that the witnesses were members, at the time when they testified, of local unions of hatters in Danbury, Bethel or Norwalk which were affiliated with the United Hatters. The jury also knew that the defendant witnesses and the defendants to whom the stipulation applies were members of these local unions at the time when the action was commenced and had been members of them long before; for, at an early stage of the trial, counsel for the defendants submitted a carefully prepared list, containing the names of all of the defendants and showing when each became a member of his local union, and admitted that they had been members of such unions in good standing and had paid dues from the dates set opposite their respective names down to the time of the commencement of the suit (2-pp. 63 to 69; 4-p. 1182).

Hence this testimony could not have been offered to show what the relations of the witnesses were to the parties, and the statement in the opinion by Judge Coxe that this testimony by the defendants "was competent to show what their relations were to the parties" has no relevancy to the facts of the case.

This testimony was offered, as we have said, for the purpose of conveying to the jury the impression that a defendant who continued a member of a hatters' union and continued paying dues, after obtaining knowledge of the contents of the "warning notice" and of the allegations of the complaint, might be found liable.

It was offered to mislead the jury, to deceive the jury and to prejudice the jury against the defendants.

And the error in admitting it was not cured by the charge of the court that "membership in a labor union, and the payment of dues, are not acts of themselves that necessarily constitute counseling, advising, aiding or abetting". The jury may have understood this to mean that, while membership and payment of dues did not "necessarily" make the defendants liable, membership and continued payment of dues after obtaining knowledge of the contents of the "warning notice" and of the complaint did make them liable.

This testimony, it should be remembered, affected all, or practically all, of the defendants.

EVIDENCE TO SHOW KNOWLEDGE BY DEFENDANTS.

Since, as we have seen, none of the defendants, except Daniel P. Kelly, took any part in the work of Moffitt and the advertising agents during the Loewe controversy, and none of the defendants, except Martin Lawlor, who was an advertising agent during the Berg controversy, and Daniel P. Kelly, who was an advertising agent during the Roelofs controversy, took any part in the work of Moffitt and the agents during the Berg and Roelofs controversies, it was absolutely essential that the plaintiffs should present evidence of knowledge by the defendants of the alleged illegal acts in connection with these controversies, and any error in the admission of such evidence is necessarily of the utmost importance to the defendants.

General Considerations.

As we have seen, if there was an illegal conspiracy against the plaintiffs of the kind alleged

in the complaint, it was the work of John A. Moffitt, President of the United Hatters of North America, the five or six agents under his control, whose appointed duty was "advertising the union label and fighting the sale of non-union made hats," and the officers and members of local labor unions in Virginia and on the Pacific Coast, none of whom, except Agent Kelly, are defendants in this suit. All of the defendants lived in Danbury, Bethel and Norwalk. Only about two were employees of the plaintiffs and joined in the strike. None of them, except Kelly, participated, in the slightest degree, in the campaign conducted by Moffitt and the advertising agents, during the controversy with the plaintiffs, not even Martin Lawlor, although he was vice-president of the United Hatters (*supra*, p. 111).

There is no evidence that Lawlor's duties as vice-president necessarily resulted in knowledge by him of what Moffitt and the agents were doing. On the contrary, it appears that the whole controversy with the plaintiffs was placed in the exclusive charge of President Moffitt sometime after the 6th day of August following the strike. See, *supra*, the section entitled "*Beginning of the Alleged Boycott*", p. 39. And, as we have seen, up to that time nothing had been done which can be claimed to have been illegal. There had been negotiations with the plaintiff Loewe to induce the plaintiffs to unionize their factory, a strike which was unaccompanied by any element of illegality, and attempts by representatives of the United Hatters to end the strike. But that is all. The liability of Lawlor, then, must rest upon the ground that he was vice-president, unless there is competent evidence in the record to bring knowledge of the alleged illegal boycott home to him. In *State* v. *Dreany*, 65 Kan. 292, an action to

punish the defendants for a criminal conspiracy in entering into a contract in restraint of trade, the defendant Shotts was held not to be liable, although he was president of the corporation which was one of the parties to the agreement. True, that was a criminal prosecution, but, as we have said above, the same act which creates a civil liability under the Anti-Trust Act must also create a criminal liability under the Act (*supra*, p. 68). If being vice-president of the United Hatters made Lawlor liable civilly it made him liable criminally.

This statement as to the connection of the defendants with the illegal acts of Moffitt and others, if any there were, shows the importance to the defendants of the rulings of the trial court in admitting evidence to show knowledge; for, since there was no participation by them, except as noted, knowledge of and acquiescence in the alleged illegal acts, and not membership in local unions and payment of dues, is the only ground upon which they can be held liable.

No doubt these defendants, because of their occupation and their residence in, and in the vicinity of, Danbury, knew something of the strike in the Loewe factory at Danbury, but they could not know, without special information, that this strike was declared for any other purpose than to establish union conditions in that particular factory; unless they had some special information, they could not know, even if it were true, that this strike later became part of an unlawful conspiracy to injure the interstate trade of the plaintiffs.

To sustain the burden of showing that the defendants had knowledge of the facts relied upon to establish the alleged conspiracy, the plaintiffs put in evidence a vast amount of matter from

various publications and records, which are not admissible under the settled rules of evidence and and which could not have conveyed to the defendants knowledge of the existence of the conspiracies alleged in paragraphs 16 and 20 of the complaint, or, for that matter, could not have charged them with knowledge of facts which would put a resonably prudent person upon inquiry as to the existence of such conspiracies, but could only have the effect of confusing the jury as to the issues to the prejudice of the defendants.

We shall now take up the consideration of this so-called evidence, selecting for quotation and special comment those items which are most likely to be relied upon by the plaintiffs.

Paragraphs and Articles in Newspapers.

The plaintiffs offered in evidence a great many paragraphs and articles in local newspapers, published at Danbury, Norwalk and South Norwalk, for the avowed purpose of showing that the various acts of which the plaintiffs complain had been going on with the knowledge of the defendants, and the court, over the objection of the defendants, admitted them in evidence for that purpose (4-p. 1104).

The newspaper publications which were thus put in evidence, according to the index to the record, number 40 in all, consisting of not less than 23 from the *Danbury News* (See *Index*, pp. XXXIV, XXXV), 12 from the *South Norwalk Evening Sentinel* (See *Index*, pp. XXXIII, XXXIV) and 5 from the *Evening Hour*, Norwalk (See *Index*, p. XXXIV).

While the defendants have a general exception to all this evidence (4-pp. 1104, 1105) the assign-

ments of error are limited to a number of representative examples, seven in all.

Assignments of Error.—The circuit court of appeals erred in sustaining and upholding the rulings of the district court which are the subject of the *Twenty-fourth* to the *Thirtieth Assignments of Error*, reading as follows:

24. That the court erred in sustaining and upholding the ruling of the district court admitting to be read, against the objection and exception of the defendants, an extract from the Danbury Evening News for the 18th day of May, 1903, entitled "Annual Address of President Moffitt." "The Head of the United Hatters Reviews his Work and Makes Recommendations," as appears on page 1105 and elsewhere of the printed record. 5-p. 1936.

25. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence against the objection and exception of the defendants, an extract from the Danbury Evening News of June 18th, 1900, entitled "Advertising the Hat Label", as appears on page 1114, and elsewhere of the record. 5-p. 1936.

26. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence against the objection and exception of the defendants, an extract from the Danbury Evening News of April 9th, 1902, entitled "United Hatters sued. H. H. Roeloff of Philadelphia wants $250,000 damages", as appears on page 1124, and elsewhere of the record. 5-pp. 1936, 1937.

27. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence against the objection and exception of the defendants, an extract from the Danbury News for Friday, July 25th, 1902, entitled: "After Loewe Factory. The Hatters' Union will attempt to Unionize this Plant," as appears on page 1127, and elsewhere of the record. 5-p. 1937.

28. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence against the objection and exception of the defendants, an extract from the Norwalk Hour for August 18th, 1900, entitled: "Wore non-union hats. An oversight made it necessary for two hatters to pay fines," as appears on page 1140 and elsewhere, of the record. 5-p. 1937.

29. That the court erred in sustaining the ruling of the district court admitting to be read in evidence against the objections and exception of the defendants an extract from the South Norwalk Evening Sentinel for August 10, 1900, entitled: "Orange Hatters may Parade"; sub-title; "The Newark Evening News of Wednesday evening said"; as appears on page 1132 and elsewhere of the printed record. 5-p. 1937.

30. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence against the objection and exception of the defendants, an extract from the South Norwalk Evening Sentinel for August 15th, 1900, entitled: "Hatters on Strike. To make Connett Factory of Orange Fair instead of Open. Union men at

BERG SHOP," AS APPEARS ON PAGE 1134 AND ELSEWHERE, OF RECORD. 5-p. 1937.

The rulings of the court to which these assignments of error apply are to be found at the following places in the record: 4-pp. 1105, 1114, 1124, 1127, 1132, 1134, 1140.

It is contended that it was error to admit these newspaper publications to show knowledge by the defendants of illegal acts done in furtherance of the alleged conspiracy because:

1. These newspaper reports were not admissible, in the circumstances of this case, for any purpose.

2. These newspaper reports do not disclose the doing of unlawful acts in furtherance of the alleged conspiracy by the officers or agents of the United Hatters nor by the associates of the defendants, and, therefore, their admission in evidence had the effect of confusing the issues to the prejudice of the defendants, and was error for this reason.

Law Governing Admission of Newspapers.— The decisions are very far from being agreed upon the circumstances which render newspapers competent evidence to bring home to a party knowledge of the facts stated therein.

In England it has been held that a newspaper may be admitted as some evidence to prove notice when it appears that the party has occasionally read the paper. In *Leeson* v. *Holt*, 1 Stark. 186, an action against a carrier for negligence, it was held by Lord Ellenborough that the defendant could not read in evidence an advertisement in the Times newspaper by which he limited his responsibility, unless he proved that the plaintiff

was in the habit of reading that paper. But, it appearing that the plaintiff had occasionally read the paper, Lord Ellenborough admitted the advertisement contained in it to be read. Other early cases of like tenor are *Graham* v. *Hope*, Peakes N. P. Cas. 154, and the cases collected in a note thereto. These cases, however, deal with the admission in evidence of the London Gazette, which, because of its official character, may stand on a somewhat different footing from ordinary newspapers.

In Massachusetts it was held in *Roberts* v. *Spencer*, 123 Mass. 397, that, on the question of whether A knew that B had withdrawn from a partnership before A made a contract with it, newspapers regularly taken by A, containing statements as to the dissolution of the firm and B's retirement from it, are admissible. And in *Commonwealth* v. *Robinson*, 67 Mass. (1 Gray) 555, it was held that a copy of a newspaper, containing an advertisement of the usual time of the arrival of a certain stage coach, is admissible in evidence of the advertised time of such arrival, and of the knowledge of such time by one who usually read the paper.

In *Milbank* v. *Dennistoun*, 23 N. Y. Super. Ct. (10 Bosw.), 382, an action against factors to recover damages sustained by the plaintiffs in consequence of alleged negligence in the sale of a cargo of flour which the plaintiffs had consigned to the defendants, wherein it was claimed that the defendants were chargeable with want of care in selling the flour when they did instead of waiting for a higher market, it was held proof that the defendant took a newspaper, which, immediately before the sale in question, contained an article calculated to put its readers on inquiry as

to the existence of causes likely to produce a rise in prices, is not admissible, unless it be proved that they saw the particular article in question. In delivering the opinion of the court Monell, J., said (p. 393):

> "If the article from this newspaper, given in evidence, was calculated to have put the defendants upon inquiry, had they seen it, or to induce the belief that the market was likely to undergo a change, and prices advance, the plaintiffs, nevertheless, cannot have the benefit of such an effect, as indicating a want of good faith by the defendants, without showing that the article, for which such an effect is claimed, came under their observation. The mere circumstance that they were subscribers for, and took the papers, is not sufficient to sustain a charge of bad faith."

Competency of Newspapers Admitted in This Case.—It is not necessary in this case to contend for the application of the rule declared in the above-cited New York decision; for the admission of the newspaper paragraph in this case was not proper even under the more liberal decisions. Even these decisions require that, in order to render a newspaper admissible to show knowledge of facts stated therein, it must appear that the party to be charged with knowledge had occasionally read the paper, that he usually read the paper, or that the paper was regularly taken by him.

But the plaintiffs introduced no evidence whatever to show that any of the defendants were regular subscribers to any of the papers put in evidence or were either regular or occasional readers of them.

It is true that, as to a large number of defendants (one hundred fifteen), it was stipulated that

if they were called as witnesses they would testify that "they read with more or less regularity some local newspaper in their respective towns, but not completely or invariably" (5-p. 1696).

But this is not sufficient to render the newspapers in evidence admissible even as to these defendants. And there is uncontradicted evidence that some of the defendants did not read these local papers to the extent admitted by this stipulation.

For example, the uncontradicted testimony of the defendant William Humphries is to the effect that he was seventy-seven years of age (4-p. 1216), that his eyesight was, and for a long time had been, very poor (4-p. 1218), so that he could read very little (4-p. 1219). It does not seem probable that such a man could be a sufficiently regular reader of a newspaper to bring him within the most liberal rule for the admission of newspapers to prove knowledge, and there is no testimony in the record to show the extent of his reading of the local papers circulated in Danbury where he lived, except that he admitted that he read one item (4-p. 1228). There is no evidence that he had ever read anything in, or that he had ever seen a copy of, the *Evening Sentinel*, published at South Norwalk, or the *Evening Hour*, published at Norwalk.

The defendant Garner could not read English (5-p. 1587).

These instances are cited merely by way of illustration; many more could be cited.

Other of the defendants who were made witnesses, and whose names are not included in the stipulation mentioned above, did not testify at all as to their reading of the local papers from which extracts were put in evidence. And there

is no testimony in the record showing, or tending to show, that these defendants read these papers regularly, or with more or less regularity, or occasionally, or at all.

We have, then, in this case, two well defined questions:

The first of these questions is whether a newspaper is admissible to prove knowledge of its contents by a party who is not shown ever to have read the paper, the only ground for its admission which has been established being that it was circulated in the community where the party to be charged with knowledge resides. The admission in evidence of a newspaper in these circumstances is not sanctioned even by the most liberal of the above-cited decisions. And in the case of *Clark* v. *Ricker*, 14 N. H. 44, in holding that to affect a party with notice, it is not competent to show that persons residing near him, or in the same village, took a newspaper in which a caution or notice was inserted, Parker, C. J., said (p. 48):

> "The attempt to charge the plaintiff with notice, by evidence that a notice was inserted in certain newspapers taken by other individuals, residing near him in the village, was wholly incompetent for that purpose. It would be preposterous to charge a party with notice of everything which is inserted in a newspaper taken by himself."

The second question, if answered in the affirmative, involves a most extraordinary proposition. It is this: Can a newspaper which is not published in the community where a defendant lives, and is not shown to have been circulated there, be competent evidence to show knowledge by him of its

contents in the absence of any evidence that he ever read it?

All but 28 of the 186 surviving defendants in this case lived either in Bethel or Danbury (2-pp. 64 to 68). These places are more than twenty miles north of Norwalk and South Norwalk. This is a geographical fact of which the court will take judicial notice (*Mutual Ben. L. Ins. Co.* v. *Robinson*, 58 Fed. 723; 16 Cyc. 863 and cases cited). Can these 158 defendants who lived in Bethel and Danbury be charged with knowledge of the contents of local newspapers which were published in Norwalk and South Norwalk?

The *Evening Sentinel* was published in South Norwalk, and, according to the evidence, was circulated in the Towns of Norwalk, Darien, Westport and adjoining towns, and in the Town of South Norwalk, the greater part of the circulation, about eight-tenths, being in the town of South Norwalk (3-p. 569).

The *Evening Hour* was published at Norwalk (3-p. 569), and there is no evidence that it was circulated outside of that place.

There is no evidence that either of these papers were circulated at all either in Bethel or Danbury. Therefore, under the most liberal rulings of the courts in favor of the admission of newspapers to prove knowledge, these two newspapers are not evidence of knowledge of their contents by the 158 defendants who resided either in Bethel or Danbury.

Admissibility of Particular Newspaper Extracts in Evidence.—But there is another, and perhaps a stronger, reason why these newspaper paragraphs and articles should not have been admitted in evidence. It is this: They do not contain any

information which could have conveyed to the defendants knowledge of the illegal acts by the officers and agents of their organization which are relied upon to establish the unlawful conspiracy alleged in the complaint, so that the only effect which the admission of these newspaper publications in evidence could have had must have been to confuse the jury and to mislead the jury as to the issues.

An examination of the illustrative examples which are made the subject of assignments of error will show that this is so.

The extract from the *Danbury Evening News* for May 18, 1903, headed 'Annual Address of President Moffitt" (4-pp. 1105 to 1107), which is the subject of the *Twenty-fourth Assignment of Error* (*Supra*, p. 178), fills nearly three pages of the record and is therefore too long to quote. But a reading of this newspaper publication as it appears in the record will show that it contains extracts from President Moffitt's address to the 1903 Convention of the United Hatters, wherein references are made to the unionizing of the factories of Berg & Co., E. V. Connett & Co., and other concerns, and an account is given of the controversy with the Roelofs, in Philadelphia, and D. E. Loewe & Co., in Danbury, but nowhere in the address, as printed in the newspaper, is anything found which even remotely hints at the employment of illegal means, in any of these controversies, to further the interests of labor.

The extract from the *Danbury Evening News* for June 18, 1900, entitled "Advertising the Hat Label" (4-pp. 114, 115), which is the subject of the *Twenty-fifth Assignment of Error* (*Supra*, p. 178), consists of an extract from the *Cleveland, Ohio, World*, published long before the con-

troversy with the plaintiffs arose. In this article it is said that the hatters "carried on quite a systematic fight and one that is telling", and that "the Union has perfected a secret service whereby we know just where every case of hats shipped out of the factory goes to, and keep it in sight until it arrives at its destination. Here the case is watched and if it goes to a jobber every sale he makes is watched and known". As we have heretofore said (*supra*, p. 71), this practice of obtaining information as to the dealers to whom non-union goods were shipped was not in itself illegal; if it was employed merely to ascertain what dealers in hats were handling non union goods so that representatives of the organized hatters could visit them and urge and persuade them, by lawful means, to handle only those hats which were made by union labor and which were stamped with the union label the representatives of the United Hatters were well within their rights. And there is nothing in this newspaper publication which shows that threats or coercion were employed to induce dealers to give a preference to union-made goods, unless informing them that union men would not buy goods which did not bear the union label constitutes a threat and coercion, which, as we have said (*supra*, pp. 107 to 110), it does not. This article speaks of visits made by Agent Brady upon hat dealers in Cleveland, but there is nothing to show that Brady employed coercive measures to induce dealers to handle only union-made goods.

The extract from the *Danbury Evening News* for April 9, 1902, entitled "United Hatters Sued" and "H. H. Roeloff of Philadelphia wants $250,000 damages" (4-p. 1124), which is the subject of the *Twenty-sixth Assignment of Error*

(*supra*, p. 178), states that several Danbury men were defendants in a suit brought by Henry H. Roeloff, of Philadelphia, against the officers and board of directors of the United Hatters, charging conspiracy to injure the complainant's business, and concludes as follows: "The hatting officers announce that they will contest the suit to the end and are confident of success". There is nothing in the article to show what illegal acts were relied upon to establish the alleged conspiracy to injure the complainant's business. The theory underlying the introduction of this newspaper extract seems to have been, and must have been, that the mere bringing of the suit and knowledge of its commencement by the defendants charged them with knowledge of an illegal conspiracy against the Roelofs Company. Absurd? Yes! Even more absurd than the theory, which we have been compelled to notice above (*supra*, pp. 169-171), that the defendants had knowledge of an illegal conspiracy against the plaintiffs after the suit at bar was commenced; for the defendants were served with the complaint in this case and are to be presumed to have known the allegations which it contains.

The Roelofs suit was not even prosecuted to effect. And a defendant who read the news item about the commencement of the suit would probably also have read items stating this fact, which appeared in later issues of the same paper. In the next issue, April 10th, there is an article giving more detailed account of this suit (4-p. 1124). And in a later issue of the paper there is an item to the effect that the hatters had been victorious in a preliminary proceeding connected with the suit (4-p. 1126). Then, in another issue of the paper the date of which, through some error, is not shown by the record, it appears that Roelofs

had made a settlement with his employees (4-p. 1126). As appears by the address of President Moffitt, which was reported in the May 18th, 1903, issue of this newspaper, a part of this agreement was the withdrawal by Mr. Roelofs of his suit for damages (4-p. 1107).

Surely these articles conveyed no information that the hatters' organization had done anything illegal. True, it appears from the articles that the complainant charged an unlawful conspiracy, but it also appears that the hatting officers were "confident of success" in the suit, that they were successful in a preliminary contest, and that the suit was abandoned. These articles would rather give a reader the impression that the charges made in the complaint were baseless and that the suit was without foundation.

The extract from the *Danbury Evening News* for July 25, 1902, entitled "After Loewe Factory" (4-p. 1127), which is the subject of the *Twenty-seventh Assignment of Error* (*supra*, p. 179), contains the statement that the United Hatters of North America, which had recently unionized several of the largest hat factories in the country, would attempt to unionize the factory of D. E. Loewe & Co. This the United Hatters had a right to do, as we have shown in our discussion of the strike in the Loewe factory. See, *supra*, the section entitled "*Purpose of the Strike*," p. 38. Therefore the only effect which this newspaper story could have would be to mislead the jury as to the issues and to incline the jury to believe that the attempt to unionize the Loewe factory was illegal within the allegations of the complaint.

This is only one of a great many items of so-called evidence which were placed before the jury

for no possible purpose other than to convey the impression that it was illegal for the United Hatters to attempt to establish union conditions in hat factories by means of strikes.

It is further stated in this newspaper publication that "President Moffitt, Vice President Lawlor and Treasurer Maher went to the factory and ordered all the union men employed there to quit". This, as we have seen, is not true; the evidence is uncontradicted that the union men employed in the Loewe factory voted unanimously to strike (*supra*, p. 26). But, even if the statement were true, the strike was nevertheless legal (*supra*, pp. 35-38).

Here we have a newspaper publication admitted in evidence to show knowledge of its contents, although one of the chief statements contained therein had been shown, by the evidence previously introduced, to be untrue. Later we shall meet with news items which were admitted to show knowledge, although there is no independent evidence in the record tending to establish the truth of that which is stated.

And, since the employees of the plaintiffs had a clear right to attempt to unionize the factory by engaging in a strike or by any other lawful means, this news paragraph conveyed no information whatever that the defendants' fellow-unionists were doing anything unlawful.

It did, however, convey to the jury an intimation that these things are illegal and rendered the defendants liable in this action.

The extract from the *Evening Hour*, of Norwalk, for August 18, 1900, entitled "Wore Non-Union Hats" (4-p. 1140), which is the subject of the *Twenty-eighth Assignment of Error* (*supra*, p. 179), is a news item to the effect that

two Danbury union hatters were compelled to pay fines for wearing non-union hats. As to this news paragraph it is to be noted, in the first place, that it does not appear that this fining of union men, assuming that it was ever done, of which there is no evidence whatever in the record other than this newspaper paragraph, was directed against any particular manufacturer or manufacturers of non-union hats, and hence it does not appear that it was an act done in furtherance of any boycott. In the second place, this occurrence, assuming that it ever took place, did not relate to the controversy with the plaintiffs. The first interview between Mr. Maher and the plaintiff Loewe, which was the first step leading up to the controversy involved in this suit, did not take place until after the 11th of November, 1900 (4-p. 977), nearly three months after the publication of the item, and the strike did not take place until July 25, 1902, nearly two years after that time.

Furthermore, it does not appear that the imposition of these fines was authorized or sanctioned by the general organization to which the defendants belong.

In the brief for the plaintiffs which was filed in the court below it was stated that "the United Hatters' Constitution fined all purchasers of non-union hats," but this is not so, as we have heretofore stated (*supra*, p. 47); the withholding of patronage from non-union goods by union members was purely voluntary.

There being no evidence in the record, other than this news item, that this fining ever took place, the item was made to serve the double purpose of establishing the fact and knowledge of the fact, and, of course, a newspaper report is not evidence of the truth of its contents, although,

as we shall see later (*infra*, pp. 216-220), newspapers were admitted in this case as proof of the truth of the statements therein contained.

The extract from the *South Norwalk Evening Sentinel* for August 10, 1900, entitled "Orange Hatters May Parade" (4-p. 1132), which is the subject of the *Twenty-ninth Assignment of Error* (*supra*, p. 179), describes the state of the negotiations then in progress for the settlement of the strike in the hat factory of F. Berg & Co., at Orange, N. J., mentions one of the matters in dispute, states that the hatters there were rejoicing over the settlement of the strike and were contemplating a parade, should the officers of the union give their consent, and concludes with the statement that there was a report in circulation to the effect that Eugene V. Connett & Co., which had a large factory near the Berg plant, would soon make its place union. There is not a word in this news item which tends to show that an illegal conspiracy had been carried on, was being carried on, or was contemplated.

The extract from the *South Norwalk Evening Sentinel* for August 15, 1900, entitled "Hatters on Strike" (4-p. 1134), which is the subject of the *Thirtieth Assignment of Error* (*supra*, p. 179), states that a strike had been inaugurated in the factory of Eugene V. Connett & Co., at Orange, N. J., gives the number of union men who had been employed in the Berg factory, the number of union men who were expected to obtain employment there and concludes with the statement that the non-union men who had filled the places of the strikers and were not given cards by the union were gradually leaving of their own accord and that no trouble was expect-

ed. The reference to the strike in the Connett factory is as follows:

> "The National Board of Officers of the United Hatters of North America yesterday ordered a strike in the hat factory of Eugene V. Connett & Co. at Orange, N. J. The strike is ordered for the purpose of making the factory a fair instead of an open shop as it is now. A fair shop is one in which only union men are employed, while an open shop employs both union and non-union men. The Connett factory employs over three hundred men."

Not only is there nothing in this news item to indicate the existence of an illegal conspiracy against the Connett Company, but there is no independent evidence in the record to establish the fact that the strike was called by the officers of the United Hatters nor to establish the truth of the other statements, so that here we have another instance, covered by the assignments of error, of a news item serving the double purpose of establishing the facts stated and conveying knowledge of those facts.

JOURNAL OF UNITED HATTERS.

Many articles and paragraphs from "The United Hatters of North America", a monthly journal published by the United Hatters (2-p. 5), which is usually called the "Journal" in this brief, were admitted in evidence over the objection of the defendants, to show knowledge by them of their contents.

Assignment of Error.—This is the subject of the *Forty-ninth Assignment of Error*, which is as follows:

49. THAT THE COURT ERRED IN SUSTAINING AND UPHOLDING THE RULING OF THE DISTRICT COURT ADMITTING IN EVIDENCE AS AGAINST ALL OF THE DEFENDANTS, IRRESPECTIVE OF WHETHER THEY HAD KNOWLEDGE OF THE CONTENTS THEREOF, THE SEVERAL ISSUES OF THE MAGAZINE CALLED "THE JOURNAL OF THE UNITED HATTERS OF NORTH AMERICA"; TO THE ADMISSION OF WHICH IN EVIDENCE AND TO THE READING OF EXTRACTS THEREFROM THE DEFENDANTS DULY OBJECTED AND EXCEPTED TO THE RULING OF THE COURT ADMITTING THE SAME. *Assignment of Error No. 49*, 5-pp. 1940-1941.

The defendants have a general objection and exception to the admission of each of these items of evidence (2-p. 350), but we shall here refer to only a few illustrative examples.

A partial list of these publications is given in the index to the record at pages XXX to XXXIII.

Reading of Journal by Defendants.—It is admitted that the defendants William P. Bailey, Simon Blake, Peter Gallagher, George H. Gilbert, Howard S. Gilbert, Charles H. Green, Michael C. Griffin and John W. Sculley are chargeable with notice of what appears in the Journals (5-pp. 1828, 1851). And there is testimony by the following defendants that they were readers of the Journal: Patrick H. Connolly (5-p. 1800), Charles O. Lathrop (2-p. 76), Martin Lawlor (5-p. 1830) and Hugh C. Shalvoy (2-p. 87; 5-p. 1725).

There is also evidence of the reading of the Journal by other defendants, but to a very limited extent. The defendant, Nathan C. Hoy, to mention one of these defendants, testified that he had not been a reader of the Journal, but that he had at times looked over the reports of the officers (4-p. 1232).

But many of the defendants testified that they did not read the Journal at all. It is not practicable to name all of these defendants, but we shall simply instance the testimony of a few of them who were called as witnesses for the defense: William Humphries (4-p. 1217), Abieneste (4-p. 1249), George M. Herrick (4-p. 1272) and Edward D. Lees (5-p. 1452). And there is no evidence in the record showing that the defendants who so testified ever read the Journal.

Other of the defendants were not questioned at all as to their reading of the magazine, and there is no evidence in the record that they ever read it.

To save calling a large number of defendants (115) it was stipulated that if they were called they would testify as follows (5-p. 1696):

> "that they were not regular readers of the Journal of the United Hatters and do not remember reading the printed reports of the conventions of the United Hatters; that to the best of their recollection they did not know prior to the commencement of this action that the officers or agents of the United Hatters had followed or were charged with following the customers or goods of any hat manufacturer in other states for the purpose of restricting or preventing the sale of such manufacturer's hats; that to the best of their recollection they never read in the Hatters' Journal, or elsewhere any statements to that effect."

While, as we have said, there is no evidence in the record that the defendants who denied reading, or were not questioned about reading, the Journal ever read it, there is some evidence as to their opportunity to read it. There is testimony that the secretaries of the local unions in Danbury, Bethel and Norwalk received copies of

the Journal which were distributed among the various factories. There were never enough copies for all the members of the union, and the copies left at the factories were never all taken away. For example, the plaintiffs' witness Bailey, who was Secretary of Local No. 2 (Bethel Finishers), testified that he received from 50 to 75 copies of the Journal each month, which he took to the factories and left on some empty bench so that those who wanted them might pick them up and read them. He never had enough to go around and all of those which he left at the factories were never taken away. The membership of his organization in 1903 was about 300 (2-p. 59). And the plaintiffs' witness Hugh C. Shalvoy, who had been Secretary-Treasurer of Local No. 11 (Danbury Finishers) since 1894, testified that he received about 350 copies of the Journal and that the stewards used to take part of them to the factories, and that some of the members used to see them and some of them did not (2-p. 87). He also testified that the approximate number of members of Local No. 11 in 1903 was 1,300 (2-p. 85). There is similar testimony by the plaintiffs' witness Lathrop, who was secretary of Local No. 1, Bethel Makers (2-p. 76), John W. Smith, Secretary of Local No. 15, Norwalk Makers (2-p. 79), and Scully, Secretary of Local No. 16, Norwalk Finishers (2-p. 5).

Admissibility of Journals Generally.—These journals were admitted as evidence of knowledge of their contents, not only by the defendants who testified that they had read the Journal from time to time, but by the defendants whose uncontradicted testimony is that they were not readers of the magazine, by the defendants regarding whom there is no testimony as to this important

fact one way or the other, and by the 115 defendants named in the above-mentioned stipulation, as to whom it appears only that "they were not regular readers of the Journal," and that they had not obtained certain information therefrom.

It is submitted that the Journals were not admissible in evidence to prove knowledge of their contents by any of these defendants; the competency of these Journals for this purpose is controlled by the same rule, which has been discussed above, that governs the admissibility of newspapers for a like purpose.

The fact that this Journal is the official publication of the United Hatters of North America, to which the local unions to which the defendants belong are affiliated, is of no consequence whatever; the only fact which can make these journals competent to prove knowledge by particular defendants must be the fact that they read them to some extent and to a larger extent than the evidence shows that the defendants to whom we are now referring read them.

And that the Journals were distributed at the factories, where a fraction of the defendants could obtain them, does not satisfy this requirement. This is of no more value to establish their admissibility than proof that a newspaper, which prints matters of interest to a defendant, was on sale at newsstands which he daily passed would be to render the newspaper admissible.

Admissibility of Particular Extracts from Journals.—But even if the court should hold against the foregoing contention, we still insist that most, if not all, of the great number of extracts from the Journals were inadmissible, even as to the defendants who read the Journals, for the further reason that they contain nothing

which tends to establish the allegations of the complaint and that, therefore, their admission had the effect of confusing the issues to the prejudice of the defendants.

For example, it was clearly error to admit extracts from the Journal showing the advertising of the hatters' union label by the United Hatters and to admit the editorial in which the label is referred to as a "boycott." This was a strong intimation to the jury that it was illegal for the members of the United Hatters to adopt and advertise the label and withhold their patronage from hats which did not bear their label—an intimation which the trial court, in refusing the defendants' request to charge as to the label, refused to correct. But we have heretofore discussed this matter (*supra*, pp. 44-48, 67-69), and need not dwell upon it here.

For the same reason it was error to admit the reports relating to the advertising of the label by Agents O'Haire (*supra*, pp. 51, 52), Hennelly (*supra*, pp. 52, 53), Scollin (*supra*, pp. 53, 54) and Byrne (*supra*, p. 54).

The plaintiffs put in evidence an item appearing in the journal of the United Hatters for October, 1903 (after the commencement of the suit), stating, in effect, that everybody in Danbury was more or less familiar with the efforts to bring about the unionizing of the factory of D. E. Loewe & Co. (4-p. 1181). This was admitted as a statement that every one in Danbury knew about the trouble (4-p. 1182).

This magazine item contains no statement as to the means which were being employed to bring about the unionizing of the factory. Here was an intimation that it was unlawful for the workmen in the Loewe factory to attempt to unionize

the factory, a matter which we have treated in an early part of this brief (*supra*, pp. 38, 39).

Many similar extracts could be mentioned were it worth while. But we submit that the errors in the admissions of these extracts is sufficient to raise the presumption of prejudice which we have mentioned at the commencement of the section on "*Errors in Admission of Evidence*" (*supra*, p. 165).

American Federationist.

A number of extracts from the American Federationist, a monthly journal published by the American Federation of Labor (2-pp. 171 to 174), were put in evidence, over the objection of the defendants, for the apparent purpose of showing knowledge of their contents by the defendants.

Assignment of Error.—This is the subject of the *Forty-second Assignment of Error*, which is as follows:

42. That the court erred in sustaining and upholding the ruling of the district court admitting in evidence the several volumes, issues and numbers of the magazine called The American Federationist, to be read in evidence as against all of the defendants irrespective as to whether they had knowledge of the contents thereof, and to the reading of extracts therefrom the defendants duly objected and excepted to the ruling of the court admitting the same (5-p. 1940).

Admissibility of American Federationist Generally.—There is almost a total absence of evidence in the record that any of the defendants were readers of the Federationist. Connolly re-

ceived a copy (5-pp. 1790-1791), but there is no testimony that he read it. And defendant after defendant testified that he had never been a reader of the magazine. This testimony is illustrated by that of Humphries, who said that he never saw a copy of it (4-pp. 1217, 1218), and that of Hoy to the same effect (4-p. 1232).

And the stipulation stating the substance of what would be the testimony of the 115 defendants who were not called (5-p. 1696) contains no reference to the reading by them of the Federationist.

In these circumstances, by the application of the rule which has been discussed above, in dealing with the admission of paragraphs and articles in newspapers, it does not seem that there can be any question but that extracts from the Federationist were erroneously admitted in evidence for the purpose of showing knowledge of their contents.

Admissibility of Particular Extracts from Federationist.—But, aside from the question whether any of the extracts from the Federationist should have been admitted in evidence, there is the question whether the particular extracts which were admitted are admissible.

The index to the record (pp. XXV-XXX) shows that more than one hundred extracts from this publication were put in evidence by the plaintiffs.

We cannot attempt to comment upon all of this matter. All that we can do is to illustrate, by a number of typical examples out of this great mass, how the issues must have been confused by the submission to the jury of these publications.

In the American Federationist for September, 1900, there is an article entitled "United Hat-

ters Label," by John Phillip, general secretary of the United Hatters, giving a brief account of the advantage of the label to the organization, referring to the controversy with F. Berg & Co., of Orange, N. J., the success of the union, and concluding as follows (4-pp. 1108 to 1110):

> "The whole-souled and hearty assistance that we have received from organized labor during the life of the strike has far exceeded anything we had anticipated. In this case, as well as in all others of a similar nature, the union label was the factor, the lever that moved the machinery. Great is the power of the union label. Without it our trade would be a deplorable condition. In closing this article, I must again convey to the organized labor of the land the thanks of the United Hatters of North America for the noble, persistent and loyal manner in which they have demanded the hat with the union label and have resolutely refused to wear or buy the product of non-union labor."

Surely, as we have heretofore said (*supra*, pp. 44-28, 67-69), the members of organized labor, as well as others, had a clear right to confine their purchases of hats to brands bearing the union label, if they so chose. And the defendants, who read this item, if any there were, could not infer therefrom that there was an illegal conspiracy afoot. The jury, however, could, and possibly did, infer that this was illegal.

In the American Federationist for March, 1901, there is a report by President Moffit stating that within the past six months the hatters' organization had been able to unionize more than twenty non-union factories, amongst which were some of the largest hat factories in the country. After giving a list of these factories, it is said that negotiations were pending for the unionizing of

two other large non-union factories (4-pp. 1179, 1180). There is nothing in this report which remotely hints at the employment of illegal means to unionize these factories. A defendant who read this could not know, but a jury to which it was read would believe, that attempts to unionize hat factories constituted an illegal conspiracy.

But we have neither space nor patience to comment upon more of this so-called evidence and shall simply append a few additional examples.

A report by John Phillips, Secretary of the United Hatters, published in the American Federationist for December, 1902, contains the following (3-p. 655):

> "Our men are steadily employed and receive good wages. The union label is booming, and for this we are indebted to the organized workers of all the land, and we thank them sincerely for their persistency in demanding union labeled hats. We have no strike or lockout now in our trade."

A report by John Phillips, Secretary to the United Hatters, published in the American Federationist for March, 1902, contains the following (3-p. 655):

> "We continually send our literature calling attention to our union label and get good results from this work."

In the American Federationist for April, 1902, there is a report by John Phillips, Secretary to the United Hatters, stating that "the strike at Philadelphia for union conditions has been on about eight months and has materially reduced the output of the factory," and that "we still hope to win" (3-p. 655).

In the American Federationist for December, 1903, the report of President Gompers to the 1903 Convention of the American Federation of Labor is published in full. This report contains an extended discussion of the advantages of the union over the so-called open shop. It is said that no force but that of persuasion, moral and intellectual influence should be exercised to convert the non-unionist to membership in labor organizations, but it is hurtful from every view point and every enlightened interest to advocate the open shop (3-pp. 795, 796).

"WARNING NOTICE".

We now come to a remarkable bit of evidence of the plaintiffs' own manufacture.

In the latter part of September, 1902, the plaintiffs caused a so-called "warning" to be printed and sent by the mails to all hatters whose names were in the current Danbury directory (5-pp. 718 to 725; 4-p. 1184) and to be published in the *Danbury Evening News* for one week (4-pp. 1024 to 1027).

Assignment of Error.—The admission of this "warning notice" is the subject of the *Sixty-first Assignment of Error*, which is as follows:

61. THAT THE COURT ERRED IN SUSTAINING AND UPHOLDING THE RULING OF THE DISTRICT COURT ADMITTING TO BE READ IN EVIDENCE AGAINST THE OBJECTION AND EXCEPTION OF THE DEFENDANTS A SO-CALLED "WARNING": "TO THE MEMBERS OF ALL LABOR UNIONS", AS APPEARS ON PAGE 720 AND ELSEWHERE OF THE PRINTED RECORD. 5-p. 1942.

Knowledge by Defendants of "Warning Notice."—There is no evidence that this notice was

in any way brought to the attention of the defendants, about 70 (2 pp. 64, 68), who resided in Bethel and Norwalk.

But there is evidence that it was published in the *Danbury Evening News* for one week beginning August 25, 1902 (4-pp. 1024 to 1027), and that it was sent by mail to the defendants whose names appeared in the Danbury directory for 1902 (3-pp. 718 to 725; 4-p. 1184).

What is said above about the competency and value of newspapers to prove knowledge of their contents shows that even the defendants who resided in Danbury cannot be held to have had knowledge of this notice. And there is no evidence in the record that the names of any of the defendants were contained in the Danbury Directory, except that a few of the defendants, of which Humphries was one (4-p. 1230), testified that their names were in it.

Contents of "Warning Notice."—The "Warning Notice", which is set forth in another connection (*supra*, p. 161), contains nothing to inform the defendants who may have received, or read, it that anything illegal had been done or was contemplated by the officers, agents or members of the United Hatters or of the affiliated unions. It is merely an announcement to the effect that all members of labor unions will be held responsible for all unlawful acts of labor unions, their officers or agents. It is very much like the notices which, in most part of the country other than the South, are commonly posted inside the fences around rural estates bearing the legend, "Trespassers Will Be Prosecuted".

This is yet another illustration of the futile character of the evidence adduced by the plaintiffs to bring home to the defendants knowledge

of the alleged unlawful conspiracy, and is a fair example of the sort of evidence, if evidence it may be called, which the court, over the objection of the defendants, permitted the plaintiffs to present to the jury.

Prejudicial Effect of Admitting the "Warning Notice".—It might be said, with a certain show of reason, that admitting this notice could not have hurt the defendants were it not for the fact that such great importance was attached to it by counsel for the plaintiffs in cross-examining the defendants who were witnesses. Defendant after defendant was asked whether he continued a member of his local hatters' union and whether he continued to pay dues after receiving this notice. In this way the jury was told by indirection, as clearly as if it had been directly and expressly told, that a defendant who had knowledge of this so-called warning notice and thereafter continued to pay dues was, or became, a party to the alleged conspiracy. But this matter had already been discussed at some length (*supra*, pp. 169-170, 173, 174) and we refer the Court to that discussion.

HEARSAY EVIDENCE.

The court admitted in evidence over the objections of the defendants a large number of conversations, letters, and newspaper publications which were pure hearsay. Exceptions to the rulings of the court in admitting this hearsay evidence were duly taken, but the defendants' assignments of error are necessarily limited to illustrative example.

CONVERSATIONS OF PLAINTIFFS' WITNESSES WITH RETAILERS.

The trial court, over the objection of the defendants, admitted the testimony of a number of witnesses for the plaintiffs as to the reasons given by certain retail dealers in hats, who bought hats from jobbers or wholesale dealers who purchased their goods from Loewe and Company, for withdrawing their patronage from these jobbers or wholesale dealers.

Assignments of Error.—This is the subject of the *Sixty-sixth* to the *Seventy-first Assignments of Error*, which are as follows:

66. THAT THE COURT ERRED IN SUSTAINING AND UPHOLDING THE RULING OF THE DISTRICT COURT ADMITTING TO BE READ IN EVIDENCE AGAINST THE OBJECTION AND EXCEPTION OF THE DEFENDANTS, FROM THE DEPOSITION OF ONE SAVANAH, A SALESMAN EMPLOYED BY TRIEST & CO. OF SAN FRANCISCO, CALIFORNIA, THAT ONE SMITH, A CUSTOMER OF SAID TRIEST & CO., REFUSED TO BUY HATS, AND STATED AS A REASON FOR NOT BUYING: "THAT HE WAS INTIMIDATED BY THE LABOR REPRESENTATIVES, ON ACCOUNT OF A BOYCOTT. HE EVEN WENT SO FAR AS TO STATE THAT HE WOULD GLADLY BUY, IF HE WERE ALLOWED TO." 5-p. 1943.

67. THAT THE COURT ERRED IN SUSTAINING AND UPHOLDING THE RULING OF THE DISTRICT COURT ADMITTING TO BE READ FROM SAID DEPOSITION OF MICHAEL SAVANAH, AGAINST THE OBJECTION AND EXCEPTION OF THE DEFENDANTS, THE STATEMENT THAT "ONE JONAS SAID TO HIM THAT HE WAS AFRAID TO BUY ON ACCOUNT OF THE BOYCOTT, AND ALSO STATED THAT HE HAD ONE OF HIS EMPLOYEES THERE, WHO IS A PROMINENT MEMBER OF THE OAKLAND LABOR COUNCIL WHO HE WAS AFRAID TO ANTAGONIZE." 5-p. 1943.

68. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence against the objection and exception of the defendants, from the deposition of one Ben Rosenthal, a salesman employed by Triest & Co. of San Francisco, the statement that one H. G. Wessels, a customer of said Triest & Co., told him (Rosenthal): "We don't want to deal while there is a boycott on. They want union goods, and this man came around and told us to handle union goods." "Did they state why the visit of Mr. Hennelly should prevent their patronizing your house? A. Well, he said they were afraid of being boycotted, and they were getting circulars." 5-p. 1943.

69. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence against the objection and exception of the defendants, from the deposition of Frank Triest, the statement that one Karl Steinhardt, a customer of said Triest, refused to buy hats, giving as a reason, the receipt of notices, from the unions; and in that connection, the following question and answer: "Did any conversation arise at this time as to why the receipt of these circulars should induce the I. X. L. to cease dealing with Triest & Co.? A. They were a ?aid of a boycott themselves." 5-p. 1943.

70. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence from the deposition of said Triest against the objection and exception of the defendants, evidence to the effect that S. Dannebaum & Co. refused to buy hats, and stated that said refusal was: "On

ACCOUNT OF RECEIVING NOTICE THAT TRIEST & CO. WERE BOYCOTTED; AT THE SAME TIME THE UNION MEN OF VALLEJO CALLING ON THEM AND NOTIFYING THEM THAT THEY SHOULD NOT PURCHASE HATS FROM TRIEST & CO. UNDER A THREAT OF BEING BOYCOTTED THEMSELVES." 5-p. 1943.

71. THAT THE COURT ERRED IN SUSTAINING AND UPHOLDING THE RULING OF THE DISTRICT COURT ADMITTING AGAINST THE OBJECTION AND EXCEPTION OF THE DEFENDANTS, THE TESTIMONY OF ONE MIDDLEKAUFF, A CUSTOMER OF THE PLAINTIFFS, AS TO THE REASON OF HIS (MIDDLEKAUFF'S) CUSTOMERS GAVE TO HIM FOR REFUSING TO BUY THE LOEWE GOODS AS FOLLOWS: "WHEN I WOULD GO TO SELL THEM, THEY WOULD TELL ME THAT THEY WERE AFRAID TO BUY THE GOODS BECAUSE OF FEAR OF BEING BLACKLISTED BY THE LOCAL UNIONS. THEY HAD BEEN VISITED BY SOME OF THEM AT TIMES." 5-pp. 1943, 1944.

Purpose of Testimony and Exceptions.—This testimony was offered, not for the purpose of proving that these customers of Triest & Company were boycotted, but only as a statement by these customers showing their "state of mind" and explaining the reasons why they discontinued the patronage of these jobbers who handled the goods of Loewe & Company (3-pp. 643, 646, 649). This evidence was objected to by the defendants and an exception duly taken (3-p. 643), and the Court expressly allowed the defendants a general objection and exception to all the evidence of this class (3-pp. 644, 649).

While the assignments of error are limited to the instances of the admission of this class of evidence which are therein cited, there is more of the same kind of testimony in the record, as may be seen by referring to the following, among other

places, in the record: 3-pp. 523, 646, 650, 651, 652, 653, 839, 840, 849, 850, 851.

Substance of the Testimony.—The substance of this testimony by Michael Savanah, Frank Triest and Benjamin Rosenthal has been given in another connection (*supra*, pp. 73-75) and need not be repeated here.

The testimony of the witness Middlekauff will also be found in an earlier part of this brief (p. 60).

Admissibility and Prejudicial Character of the Testimony.—While it would be an easy matter to enter upon an elaborate discussion of principles of evidence which exclude this sort of testimony, we shall content ourselves with the citation of *Tilk* v. *Parsons*, 2 C. & P. 202. This is an old decision and a careful search has failed to disclose that its authority has ever been questioned. The declaration in that case stated that the plaintiff carried on the trade of a baker, and that the defendant spoke of him words imputing that he had been fined for using plaster of paris in his bread. The words were proved, and, to make out the special damage, a person who kept a shop at which the plaintiff's bread was sold was called. Having proved that certain persons who he was in the habit of serving with the plaintiff's bread refused to purchase it any longer, the plaintiff's counsel wished to ask him whether they assigned any reason for such refusal. But Best, C. J., said:

> "That question cannot be asked. You might call these customers, who are named in the declaration, and might ask them on their oaths what was the reason for not continuing to buy the plaintiff's bread; but I am clearly of opinion that what they said to the salesman is not evidence."

The record contains no testimony as to these conversations by the persons with whom the witnesses claimed to have had them.

There is no testimony at all by H. H. Wessels and Carl Steinhardt.

As to the alleged reasons which the firm of S. Dannenbaumm and Company gave for discontinuing the purchase of hats from Triest & Company, it does not appear with what members of the firm or with what representatives of the firm the deponent Frank Triest had his alleged conversation.

Middlekauff, as we have seen, was not required, under the ruling of the court, to name those of his customers with whom he claimed to have talked (*supra*, p. 60).

W. Smith and A. Jones, who are mentioned in Savanah's deposition (*supra*, p. 74), gave their depositions, but they did not testify as to any conversations with him; and, as we have seen, their testimony as to their reasons for discontinuing the dealings with Triest & Company is at variance with the reasons imputed to them by Savanah (*supra*, p. 76).

We submit that it was error, and prejudicial error, for the trial court to admit this evidence. The learned trial judge should have given heed to the view expressed by the Court of Appeals, on reviewing the case after the first trial (*Lawlor* v. *Loewe*, 187 Fed. 522), when Judge Lacombe, in delivering the opinion of the court, said (p. 527):

> "A salesman of plaintiffs testified that he called at various times on several different customers, giving their names. In some instances he was allowed to state that the customer told him that at some prior time he had been interviewed by some labor representative who told him that unless he ceased to handle plaintiffs' goods he would get into

trouble with the union. This was hearsay, the narrative of a past transaction given by an outside party, not under oath. It was not competent to prove that threats had been made by some one purporting to represent defendants. Its admission is sought to be sustained upon the authority of cases, which hold that it is proper to show as part of the *res gestae* what reason was given by a person as an excuse for discontinuing some former practice. Wigmore on Evidence, §1729, and cases cited. This exception to the general rule should not be extended as far as it was in some of the instances testified to."

Testimony by Stokes as to What His Salesman Told Him Retailers Thought.

Only differing from the foregoing testimony in that the person with whom the alleged conversations were held was not the witness, but an intermediate person, is the testimony of the plaintiffs' witness Stokes as to what he was told by his salesman as to the reasons why retailers would not buy goods from him, Stokes.

Assignment of Error.—This is the subject of the *Fifty-fourth Assignment of Error*, which is as follows:

54. That the court erred in sustaining and upholding the ruling of the district court permitting to be read in evidence against the defendants' objection and exception, the following questions and answers from the deposition of said Stokes: "Did you not associate the publication of that matter concerning your concern with certain developments or events in connection with the whole thing? A. About that time, or probably a little afterwards, I was told by our city salesman that he found it

PRACTICALLY IMPOSSIBLE TO SELL OUR GOODS ON THIS MARKET.

Q. CAN YOU STATE WHY? A. BECAUSE IF THE RETAILERS BOUGHT GOODS FROM US THEY THOUGHT THEY WOULD BE INJURED IN THEIR BUSINESS BY THE LOSS OF PATRONAGE FROM LABOR UNIONS". 5-p. 1941.

Substance, and Admissibility, of the Testimony.—From the deposition of the plaintiffs' witness Thomas D. Stokes, who was engaged in the wholesale hat business at Richmond, Virginia (3-p. 513), and purchased hats from the plaintiffs (3-p. 514), the court admitted in evidence, over the objection of the defendants on the ground that it was hearsay, the testimony which is set forth in the assignment of error (3-p. 521).

We know of no exception to the rule against hearsay which sanctions the admission of this testimony as to what someone had told the witness that someone else had thought or said.

LETTERS FROM THIRD PARTIES TO PLAINTIFF LOEWE.

The defendants contend that the trial court erred in allowing to be read in evidence certain letters written by persons, who, by no possibility, can be claimed to be parties to the conspiracy alleged in this case, to the plaintiff Loewe. This is the subject of the *Fifty-third, Fifty-fifth* and *Fifty-sixth Assignments of Error*, which are as follows:

53. THAT THE COURT ERRED IN SUSTAINING AND UPHOLDING THE RULE OF THE DISTRICT COURT ADMITTING TO BE READ IN EVIDENCE AGAINST THE OBJECTION AND EXCEPTION OF THE DEFENDANTS, A LETTER FROM ONE THOMAS D. STOKES TO D. E. LOEWE, DATED RICHMOND, VA., DECEMBER 2, 1902, AS APPEARS ON PAGE 516 AND ELSEWHERE OF THE PRINTED RECORD. 5-p. 1941.

55. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence against the objection and exception of the defendants, a letter from Thomas D. Stokes to D. E. Loewe, dated Richmond, Va., Jan. 20, 1903, as appears on page 525 and elsewhere of the printed record. 5-p. 1941.

56. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence against the objection and exception of the defendants, a letter from Longley, Lowe & Alexander to D. E. Loewe, dated February 24, 1903, as appears on page 552 and elsewhere of the printed record. 5-pp. 1941-1942.

In connection with these assignments we refer especially to letters from Thomas D. Stokes to D. E. Loewe (3-pp. 516, 517, 525, 526), and to a letter from Longley, Lowe & Alexander (3-p. 522).

We submit to the court that this is hearsay evidence in that the writer informs Mr. Loewe of statements made by third persons not under oath.

Testimony of Plaintiff Loewe as to What Gildea said that Maher said.

The court admitted in evidence, over the objections of the defendants, the testimony of the plaintiff Loewe as to what one Gildea, who was in the employ of the plaintiffs, had told him, Loewe, that he had heard Maher, an officer of the United Hatters, say.

Assignment of Error.—This is the subject of the *Fifty-ninth Assignment of Error*, which is as follows:

59. THAT THE COURT ERRED IN SUSTAINING AND UPHOLDING THE RULING OF THE DISTRICT COURT ADMITTING THE PLAINTIFF LOEWE TO TESTIFY AGAINST THE OBJECTION AND EXCEPTION OF THE DEFENDANTS, THAT ONE JAMES GILDEA, TOLD THE PLAINTIFF THAT MR. MAHER HAD STATED AT A CERTAIN MEETING ATTENDED BY SAID GILDEA, THAT: "WE HAVE GOT THEM, BECAUSE OUR AGENTS ARE READY, AND WE WILL SEND THEM ON THE ROAD, AND THEY WILL RUIN HIS (MEANING THE PLAINTIFF'S) BUSINESS. IF HE SHOULD FURNISH HIS FACTORY WITH NON-UNION MEN TO THE ROOF, IT WON'T DO HIM ANY GOOD, OUR AGENTS ARE READY, AND WE WILL RUIN HIM." 5-p. 1942.

Substance of the Testimony.—The court, over the objection of the defendants, allowed the plaintiff Loewe to testify that one Gildea told him, shortly after the strike was instituted, that Mr. Maher, one of the officers of the United Hatters, stated at a meeting which Gildea attended, that (referring to the plaintiffs), "We have got them, because our agents are ready and we will send them on the road and they will ruin his business," and that "If he should furnish his factory with non-union men to the roof, it wont' do him any good, our agents are ready and we will ruin him." (4-pp. 1009 to 1012.)

Ground upon which Testimony Admitted.—The court admitted this testimony on the ground that the jury might find that Gildea was one of the co-conspirators (4-pp. 1010, 1011) and in the charge to the jury stated that they might consider this testimony if they found that Gildea was at the time engaged as one of the conspirators (1-pp. 420, 421).

Status of Gildea as a Conspirator.—At the time when this testimony was admitted the only information which had been presented in regard to Gil-

dea was that he belonged to the union (4-pp. 1009, 1011) and that he was not in good standing (4-pp. 1097, 1098).

And no testimony was introduced later to connect him with the alleged conspiracy.

Nor was he made a defendant in this case.

Gildea returned to the employ of the plaintiffs about two or three weeks after the strike and was in their employ at the time of the last trial of the case (4-pp. 1097, 1098). At the time when he returned to work there was no intention on the part of the officers of the United Hatters to send out agents on the road to follow the goods of the plaintiff; this was not determined upon until nearly the middle or after the middle of August (5-pp. 1830, 1831). See, *supra*, the section entitled "*Beginning of the Alleged Boycott*," p. 39. Until this was done there was only a strike by the employees of the plaintiffs; there was no boycott of any kind, legal or otherwise, so that it can hardly be claimed by the plaintiffs that there was any illegal conspiracy until that time. But by that time Gildea, according to a fair construction of the testimony, had severed his connection with the strikers and re-entered the employ of the plaintiffs.

Such is the evidence upon which the jury was permitted to find that Gildea was a conspirator with the defendants in order to accept his alleged statement to Loewe as a declaration by a felllow conspirator.

Admissibility, and Prejudicial Character, of the Testimony.—We submit that the testimony of the plaintiff Loewe as to what his employee Gildea had told him that he (Gildea) had heard somebody else say was neither competent at the time when it was received in evidence nor rendered

competent by any evidence which was subsequently introduced.

That the error was prejudicial to the defendants there can be no doubt. There was, as we have seen, no element of illegality connected with the strike. See, *supra*, "*Strike on July 25, 1902*," p. 20, *et seq.* Loewe testified that Gildea told him what Maher had said "shortly after the strike was instituted." But, as we have seen, for a period of nearly two weeks after the strike the officers of the hatters' union were attempting to settle the trouble in a peaceful way and without resorting to an industrial war (*supra*, pp. 34, 35). This testimony by Loewe is the only evidence in the record tending to prove that the so-called boycott had been determined upon at this early date, and, but for this testimony, the jury would not have had the slightest basis for so finding.

PARAGRAPHS AND ARTICLES IN NEWSPAPERS.

The court erred in admitting in evidence various extracts from several newspapers, published in Virginia, California and Oregon, not to prove knowledge of their contents by the defendant residents of Connecticut, but to prove that the defendants used the daily press to promulgate boycotts and to prove the facts therein stated.

It is true that the defendants have no assignments of error relating to the admission of these newspaper paragraphs, but the errors in admitting them seem to be so glaring that the attention of this Court is directed to these rulings in order that the Court may, under section 4 of rule 21, at its option, notice a plain error not assigned.

Admissibility of Newspaper Publications.— These newspaper publications might be admissible to show that the officers and agents of the

United Hatters used the daily press to promulgate the alleged boycotts if there were evidence that these publications were made at their instance, or even if there were independent evidence tending to prove that they made such use of the daily press. But there is absolutely no such evidence in the record, and we challenge the counsel for the plaintiffs to point out any such evidence.

Upon the question of the admissibility of newspaper publications to prove the truth of the statements therein contained one might expect that no authorities can be found. But, strange as it may seem, there are authorities. In a standard work on the laws of England, recently published, it is said: "A newspaper report is not admissible as evidence of the facts therein stated." 13 Halsbury's Laws of England, p. 565, citing *Rossmore (Lord)* v. *Mowatt*, (1850) 5 Jur. 238. And there is a statement to the same effect in 9 Am. & Eng. Enc. of L., 2nd ed., p. 885. In *Child* v. *Sun Mut. Ins. Co.*, 3 Sandf. (N. Y.) 26, 43, it is held that a newspaper item is not competent evidence to prove the facts therein stated.

Thus, a notice in a newspaper published in New York of the death of a certain person in Texas is not admissible in the former state to prove the fact of such person's death. *Fosgate* v. *Herkimer Mfg., etc. Co.*, 9 Barb. (N. Y.) 287.

A newspaper account of what took place at the meeting of a municipal corporation, with respect to a certain sewer, is inadmissible. *Riley* v. *St. John*, 11 New Bruns. 78.

A newspaper account of an accident is not admissible in an action against a railroad company, without proof that it was an original memorandum, or that it contained statements made by the parties at the time. *Downs* v. *New York Cent. R. Co.*, 47 N. Y. 83.

Some of the authorities which have been cited in the course of the discussion of the competency of newspapers to establish knowledge of their contents (*supra*, pp. 180-182) are also applicable.

But the citation of authorities to support, or any discussion of, this rule is, of course, unnecessary, and we shall proceed to examine some of these remarkable items of so-called evidence.

Morning Astorian.—The plaintiffs' witness Schlussel, a dealer in hats at Astoria, Oregon, who had bought hats from Triest & Co., was shown a copy of a daily newspaper published at that place (3-pp. 919, 920) and an extract from the paper of the date of September 5, 1903, which was published at about the time of the visit of Mr. Hennelly, agent of the United Hatters, to Astoria, was introduced in evidence over the objection of the defendants (3-pp. 919-921).

The news item thus introduced in evidence contained statements that Mr. Hennelly was in Astoria in the interest of union labor, that he was creating a local sentiment in favor of union-made hats, that local dealers had been requested to discontinue selling the Loewe hat which was handled almost exclusively by Triest & Co., etc. (3-pp. 920, 921).

As evidence of these facts the newspaper item is of course subject to the objection of the defendants that it is hearsay. The plaintiffs, however, relied upon it in support of the allegation of the complaint that the defendants used the daily press to promulgate boycotts, etc. (3-p. 921). But there is no evidence whatever in the record that this news item had been inserted in the paper at the instigation of the defendants or their agents; for all that appears the publishers of the newspaper were alone responsible for its publication.

The Bulletin of San Francisco.—There was also admitted over the objection of the defendants a news item, published in *The Bulletin*, of San Francisco, for July 4th, 1903, stating that Daniel P. Kelly, representing the United Hatters, addressed the Labor Council of San Francisco, purporting to give the substance of the address, and stating that the Labor Council had decided to declare a boycott on Triest & Co. so long as they handled the hats of Loewe & Co. (3-pp. 588, 590). And there was also admitted, over the objection of the defendants, a somewhat similar news item published in the July 2nd, 1903, *Bulletin* (3-pp. 636, 637).

There is testimony that the *Bulletin* is extensively circulated in San Francisco and the State of California (3-p. 880), but there is nothing in the record whatever showing, or tending to show, that this newspaper was an organ of the defendants or that the items which the court admitted were published at the instigation of the defendants or their agents. On the contrary it affirmatively appears by the testimony for the plaintiffs that both items were the result of the regular work of the reporters of the paper in gathering news (3-pp. 637, 638).

Richmond News.—A news item in the December 10th, 1902, issue of a daily paper called the *Richmond News*, was offered in evidence "directly as proof of the fact" and admitted over the objection of defendants, who saved an exception (3-p. 510).

This item stated, among other things, that two representatives of the United Hatters had been and were in Richmond, Va., pushing the fight against T. D. Stokes, and that his firm had been placed on the unfair list by the Trade and Labor Council (3-p. 512).

While there is some authority for the proposition that a witness may refer to a newspaper report to refresh his memory if he read it at the time when he had a recollection of the statements therein contained and knew them to be true (13 Halsbury's Laws of England, p. 565, citing *Topham* v. *McGregor* (1844), 1 Car. & Kir. 320, *Dyer* v. *Best*, 4 H. & C. 189, per Pollock, C. B., at p. 192; see also *Bragg Mfg. Co.* v. *City of New York*, 141 Fed. 118) this particular item was not used in that manner. The reporter who prepared the paragraph merely testified that he attended a meeting of a labor organization and that the facts as stated in the news item correctly stated the events which occurred at the meeting (3-p. 511). He did not say that he had any independent recollection of the facts.

There is no authority for the admission of such evidence; on the contrary its admission is against the authorities which are cited above. Even had the witness used the paragraph to refresh his memory and testified to a recollection of the facts stated therein the paragraph itself would not, under well-settled rules, have been admissible.

Some support to this contention is afforded by the cases of *Southern Pac. Co.* v. *Schuyler*, 135 Fed. 1015, 1017, and *Southern Pac. Co.* v. *Cavin*, 144 Fed. 348, 352, although they are not directly in point.

Self-serving Declarations.

Under this head we refer to the following assignments of error:

57. That the court erred in sustaining and upholding the ruling of the district court admitting to be read in evidence against the objec-

TION AND EXCEPTION OF THE DEFENDANTS, A LETTER WRITTEN BY THE PLAINTIFF D. E. LOEWE TO JAMES P. MAHER IN NOVEMBER, 1900, AS APPEARS ON PAGE 981 AND ELSEWHERE OF THE PRINTED RECORD. 5-p. 1942.

58. THAT THE COURT ERRED IN SUSTAINING AND UPHOLDING THE RULING OF THE DISTRICT COURT AGAINST THE OBJECTION AND EXCEPTION OF THE DEFENDANTS, THE PLAINTIFF LOEWE TO TESTIFY AS TO WHAT HE SAID TO HIS EMPLOYES ON OR ABOUT THE 26TH DAY OF JULY, 1902, FOR THE PURPOSE OF INDUCING THEM TO REMAIN IN HIS EMPLOYMENT, AS APPEARS ON PAGES 1013, 1014, AND ELSEWHERE OF THE PRINTED RECORD. 5-p. 1942.

The letters from the plaintiff Loewe to Maher, of which at least one was prepared by Loewe with the assistance of Mr. Charles H. Merritt, a member of the American Anti-Boycott Association, are referred to at pages 21 and 22 of this brief.

And what Loewe said to his employees on or about the 26th day of July, 1902, for the purpose of inducing them to remain in his employment, is referred to at page 31.

We submit that all of these matters are self-serving declarations and, therefore, incompetent and that their admission was prejudicial error.

DEPOSITIONS CONTAINING NO MATERIAL OR RELEVANT TESTIMONY.

This matter is covered by the *Fiftieth* to the *Fifty-second Assignments of Error*, which are as follows:

50. THAT THE COURT ERRED IN SUSTAINING AND UPHOLDING THE ACTION OF THE DISTRICT COURT OVERRULING THE MOTION OF THE DEFENDANTS TO SUPPRESS THE DEPOSITION OF ONE PATRICK LYNCH AND ERRED IN SUSTAINING AND UPHOLDING THE ACTION OF THE

DISTRICT COURT IN ADMITTING TO BE READ IN EVIDENCE AGAINST THE OBJECTION AND EXCEPTION OF THE DEFENDANTS THESE PORTIONS OF SAID DEPOSITIONS IN WHICH SAID LYNCH DECLINES TO ANSWER CERTAIN QUESTIONS, ON THE GROUND THAT HIS ANSWER MIGHT TEND TO INCRIMINATE HIM. 5-p. 1941.

51. THAT THE COURT ERRED IN SUSTAINING AND UPHOLDING THE ACTION OF THE DISTRICT COURT OVERRULING THE DEFENDANTS' MOTION TO SUPPRESS THE DEPOSITION OF JOHN J. FORD, AND IN ADMITTING TO BE READ IN EVIDENCE AGAINST THE OBJECTION AND EXCEPTION OF THE DEFENDANTS THOSE PORTIONS OF SAID DEPOSITION IN WHICH THE SAID FORD DECLINED TO ANSWER CERTAIN QUESTIONS ON THE GROUND THAT HIS ANSWER MIGHT INCRIMINATE HIM. 5-p. 1941.

52. THAT THE COURT ERRED IN SUSTAINING AND UPHOLDING THE ACTION OF THE DISTRICT COURT OVERRULING THE DEFENDANTS' MOTION TO SUPPRESS THE DEPOSITION OF ONE EUGENE F. RILEY, AND ERRED IN SUSTAINING AND UPHOLDING THE ACTION OF THE DISTRICT COURT ADMITTING TO BE READ IN EVIDENCE AGAINST THE OBJECTION AND EXCEPTION OF THE DEFENDANTS, THOSE PORTIONS OF SAID DEPOSITION IN WHICH SAID RILEY DECLINED TO ANSWER CERTAIN QUESTIONS ON THE GROUND THAT HIS ANSWERS MIGHT INCRIMINATE HIM. 5-p. 1941.

As to a number of depositions which had been taken at the instance of the plaintiffs, the defendants made a motion to suppress. This motion was denied, and the depositions were admitted over the objection of the defendants, who duly excepted to the rulings (3-p. 488).

The depositions so admitted contained no testimony having the slightest relevancy to the issues of the case for the reason that, as appears by the depositions, the deponents declined to answer ques-

tions on the ground that their answers might tend to incriminate them and take from them whatever little property they might have.

In pursuance of this ruling the court admitted the depositions of the following witnesses: Patrick Lynch (3-p. 488); John J. Ford (3-p.495); Frank Keegan (3-p. 509); Eugene F. Reilly (3-p. 57); William Wixted (3-p. 572); Charles Morris (3-p. 575).

Not only did the court deny the motion to suppress these depositions, but permitted to be read in evidence, against the objections and exceptions of the defendants, those portions of the depositions in which the deponents declined to answer certain questions on the ground that their answers might tend to criminate them (3-p. 488, 489 to 495, 497 to 500, 557, 560, 563, 572 to 574).

Since these depositions contain no testimony relevant to the issues of the case, the only purpose of introducing them in evidence must have been to prejudice the jury against the defendants by making it appear that members of labor unions refused to answer questions on the ground that their answers might tend to incriminate them. Certainly this could have been the only purpose of reading to the jury those portions of the depositions showing the refusal of the witnesses to answer questions, and the ground of their refusal.

If this were the only instance of the admission of irrelevant testimony in the case, it might with some reason be argued that the admission of these depositions, and parts of depositions, though erroneous, was not of any great importance. But this is only one instance of the erroneous admission of a vast amount of irrelevant and incompetent evidence calculated to make an impression upon the minds of the jury unfavorable to the de-

fendants. For this reason we bespeak the serious consideration of these assignments of error by the court.

In this connection, attention is called to the language of the court in *Philin* v. *Kenderdine*, 20 Pa. St. 354, as follows (p. 363):

> "When a witness declines answering a question upon the ground of its tendency to incriminate him, the objection is addressed to the court and the decision upon it is to be made by the court and not by the jury. If the privilege claimed by the witness is allowed the matter is at an end. The claim of privilege and its allowance is properly no part of the evidence submitted to the jury and no inference whatever can be legitimately drawn from the legal assertion by the witness of his constitutional right. The allowance of the privilege would be a mockery of justice if either party is to be affected injuriously by it. The exercise of this right by the witness is not under the control of the parties, and no one can be affected by evidence which his adversary fails to produce, and which, therefore, cannot be met or explained by cross-examination, rebutting evidence, or otherwise."

The case of *Carne* v. *Litchfield*, 2 Mich. 340, involved the question of the propriety of comment by counsel upon the refusal of a party to answer, and the opinion contains some pertinent language.

In *Garrett* v. *St. Louis Transit Co.*, 219 Mo. 65, 69, it was held that the trial court properly excluded part of a deposition wherein it appeared that the deponent, when a witness before a coroner's jury, had refused to answer certain questions on the ground that his answers might tend to incriminate him.

IV.

Admitting Evidence of, and Allowing Recovery for, Damages Accruing After Commencement of Action.

The trial court, over the objections of the defendants, admitted evidence of damages accruing after the commencement of the action and, by the instructions given and the refusal of requests to charge, allowed a recovery for such damages. The action was commenced on September 14, 1903, or, at the latest, on September 23rd (3-pp. 592, 593).

ASSIGNMENTS OF ERROR.

The action of the trial court in admitting, over the objection of the defendants, evidence to show damages accruing to the plaintiffs after the commencement of the action (3-pp. 874, 875; 4-pp. 1041, 1054 to 1059, 1067, 1073, 1074) is the subject of the *Sixty-third* to the *Sixty-fifth Assignments of Error,* which are as follows:

63. THAT THE COURT ERRED IN SUSTAINING AND UPHOLDING THE RULING OF THE DISTRICT COURT ADMITTING AGAINST THE OBJECTION AND EXCEPTION OF THE DEFENDANTS, THE EVIDENCE OF THE PLAINTIFF, LOEWE, AS TO THE AMOUNT OF BUSINESS DONE WITH THE PLAINTIFFS' CUSTOMERS FOR THE CALENDAR YEAR OF 1900, THE CALENDAR YEAR OF 1901, THE CALENDAR YEAR OF 1902 AND THE CALENDAR YEAR OF 1903. 5-p. 1942.

64. THAT THE COURT ERRED IN SUSTAINING AND UPHOLDING THE RULING OF THE DISTRICT COURT ADMITTING TO BE READ IN EVIDENCE A LIST OF THE PLAINTIFFS' CUSTOMERS AND OF THE AMOUNTS OF BUSINESS DONE WITH EACH OF SAID CUSTOMERS FOR THE YEAR

1904, AS APPEARS ON PAGES 1054 TO 1059 INCLUSIVE, OF THE PRINTED RECORD. 5-p. 1942.

65. THAT THE COURT ERRED IN SUSTAINING AND UPHOLDING THE RULING OF THE DISTRICT COURT ADMITTING TO BE READ IN EVIDENCE AGAINST THE OBJECTION AND EXCEPTION OF THE DEFENDANTS THE STATEMENT OF PROFIT AND LOSS OF THE PLAINTIFFS' BUSINESS FOR THE YEAR ENDING DECEMBER 31, 1904, AS APPEARS ON PAGES 1073 AND 1074 OF THE PRINTED RECORD. 5-pp. 1942, 1943.

The refusal of the trial court to charge the jury, as requested by the defendants, that the plaintiffs are not entitled to recover damages suffered after the commencement of the action (1-p. 409; 5-p. 1893) is made the subject of the *Twelfth Assignment of Error*, which is as follows:

12. THAT THE COURT ERRED IN SUSTAINING THE REFUSAL OF THE DISTRICT COURT TO CHARGE THE JURY AS REQUESTED IN THE TWELFTH PARAGRAPH OF THE DEFENDANTS' REQUESTS TO CHARGE, AS FOLLOWS:

"12. THE PLAINTIFFS ARE NOT ENTITLED IN THIS ACTION TO RECOVER IN DAMAGES SUFFERED AFTER THE COMMENCEMENT OF THIS ACTION, TO-WIT: SEPTEMBER 23RD, 1903." 5-p. 1933.

The error of the trial court in charging the jury that the plaintiffs are entitled to recover all damages which are the proximate and natural result of acts done by the defendants or their agents before the suit was commenced, including such damages as may have continued or resulted therefrom after the suit was commenced (1-pp. 419, 423, 424; 5-p. 1896), is covered by the *Twenty-first Assignment of Error*, which is as follows:

21. THAT THE COURT ERRED IN HOLDING THAT THE DISTRICT COURT PROPERLY CHARGED THE JURY AS FOLLOWS, TO-WIT:

"THE ONLY ACTS OF THE DEFENDANTS FOR WHICH THE PLAINTIFFS CAN RECOVER DAMAGES IN THIS CASE ARE SUCH ACTS AS ARE SET FORTH IN THE COMPLAINT AND AS WERE DONE BY THE DEFENDANTS OR THEIR AGENTS BEFORE THE SUIT WAS COMMENCED; AND THE PLAINTIFFS ARE ENTITLED TO RECOVER ALL DAMAGES WHICH ARE THE PROXIMATE AND NATURAL RESULT OF SUCH ACTS, INCLUDING SUCH DAMAGE AS MAY HAVE CONTINUED OR RESULTED THEREFROM AFTER THE SUIT WAS COMMENCED BY THE PLAINTIFFS, BUT CANNOT RECOVER IN THIS SUIT FOR ANY DAMAGES WHICH ARE THE RESULT OF THE CONTINUATION OF THE ALLEGED CONSPIRACY AFTER THE SUIT WAS COMMENCED, OR WHICH ARE THE RESULT OF THE PERFORMANCE OF ANY ACTS IN FURTHERANCE OF SAID CONSPIRACY AFTER THE SUIT WAS COMMENCED; AND IT IS FOR YOU TO DETERMINE FROM ALL THE EVIDENCE IN THE CASE WHAT PART, IF ANY, OF THE PLAINTIFFS' DAMAGE WHICH RESULTED AFTER THE SUIT WAS STARTED WAS THE DIRECT AND PROXIMATE RESULT OF THE ALLEGED WRONGFUL ACTS OF THE DEFENDANTS BEFORE THE COMMENCEMENT OF THE SUIT, AND ALLOW THEREFOR." 5-p. 1936.

RULE FOR COMPUTING DAMAGES APPLICABLE IN CASE AT BAR.

This is an action at law and therefore the equity rule allowing the recovery of damages down to the time of the decree (1 Enc. of L. & Prac., p. 1079; 4 Sedgwick on Damages, 9th ed., p. 1256) is not applicable.

It is an action in tort and, therefore, the rule which is applicable in a suit for the breach of a

contract of employment or in any other action for the total breach of an entire contract (1 Sedgwick on Damages (9th ed.), p. 90; *Wilson* v. *Plummer*, 29 U. S. (4 Pet.) 172) has no application.

And the character of the tort which constitutes the cause of action in this case is not such as to make this a case for the application of the rule governing the time to which damages may be assessed in actions for torts which produce immediate and permanent injury so that only one action can be maintained therefor, the rule in such cases being, as appears by the appended citations, that the plaintiff is entitled to recover all the damages sustained, including not only all the damages sustained up to the time of the trial or verdict but even prospective damages.

New York, etc., R. Co. v. *Estell*, 147 U. S. 591;
Fort v. *Union Pac. R. Co.*, 2 Dillon 259;
Chicago, etc., R. Co. v. *Robbins*, 159 Ill. 598;
Chicago, etc., R. Co. v. *Hoag*, 90 Ill. 339;
Baltimore v. *Merryman*, 86 Md. 584;
Fowle v. *New Haven & N. Co.*, 107 Mass. 352;
Wheeler v. *Hanson*, 161 Mass. 370.

The alleged wrongful combination or conspiracy for which the plaintiffs seek to recover is a continuing wrong of a temporary and removable character for which successive actions may be recovered from time to time as damages may accrue and, therefore, the case is not excepted from the general rule that the rights of the parties to an action at law must be determined according to the facts existing when it was commenced (1 Enc. of L. & Prac. 1079; *Woodbridge* v. *Pratt, etc., Co.*, 69 Conn. 304; *Moyer* v. *Scott*, 30 Mich. 348; *Storm* v. *Livingston*, 6 Johns. (N. Y.) 44; *Garrigue* v.

Loescher, 3 Bosw. (N. Y.) 578; *Moreland* v. *Atchison*, 24 Tex. 164) from which arises the rule for computing damages that only damages sustained by the plaintiff at the time of the commencement of his action can be recovered. In *Park & Sons Co.* v. *Hubbard*, 134 App. Div. 468, Clarke, J., in delivering the opinion of the court, said (p. 471), referring to the common law, that in actions at law

> "it was the settled rule that the entire cause of action must have existed at the time of the commencement of the suit, and it was in but a few exceptional cases that damages which had not then accrued could be recovered."

There seem to have been no exceptions to this rule in the early days of the English law; it appears that the invariable rule of the early common law of England was that only such damages were recoverable as had been sustained at the time of the institution of the action. Comyn's Digest, title Damages, D. And see *Pilford's Case*, 10 Coke 115 b; *Brasfield* v. *Lee*, 1 Ld. Raym. 329; *Powers* v. *Ware*, 4 Pick (Mass.) 107. Probably this rule was first departed from by Lord Mansfield, who declared it to be "agreeable to the principles of the common law that wherever a duty has incurred, pending the writ, for which no satisfaction can be had by a new suit, such duty shall be included in the judgment to be given upon the action already depending." *Robinson* v. *Bland*, 2 Burr. 1077. That there are certain exceptions to the rule has been recognized by the American courts from the earliest days.

It will be observed that Lord Mansfield based the exceptions upon the fact that "no satisfaction can be had by a new suit." This is still the basis of the recognized exceptions. As is clearly shown by the decisions, the exceptions to the general rule

depend entirely and solely upon the fact that the plaintiff will not be able to maintain more than one action upon the contract or for the tort which forms the basis of his action.

The reason for the exceptions is sound. Where a plaintiff can bring only one action for the wrong done him, the general rule limiting the damages recoverable to those sustained at the time of the commencement of the action would obviously be unjust; for to apply that rule would be to deny him complete relief should he exercise his clear right of bringing suit immediately upon the infliction of the injury, or else to compel him to delay action to permit of the accrual of damages at the risk, among other contingencies, of the loss of his right of action by limitation, of his becoming unable to establish his cause of action by reason of the death, or disappearance, of witnesses or the loss or destruction of evidence in other ways, and of a decrease in the ability of the defendant to respond in damages. Hence it is that in circumstances in which the plaintiff can maintain only one action for the redress of the wrong done him he is entitled, whether that wrong is a breach of contract or a tort, to recover, not only all the damages sustained up to the time of the trial or verdict, but even future or prospective damages.

But this defines the extent of the recognized exceptions. Where the person injured is entitled to maintain successive actions from time to time as the damages accrue, as where a contract is not terminated by the breach but continues to be a subsisting contract, or a tort is not an isolated act producing immediate and permanent injury but a wrongful act which gives rise to a continuous series of torts which can be put an end to by the wrongdoer discontinuing the act, damages are re-

coverable only up to the time of the commencement of the action.

There is really no conflict of authority as to this; the only conflict to be found in the decisions is as to whether, in given circumstances, the breach of the contract is such that there can be only one or successive actions, or as to whether the tort is of such a nature as to give rise to only one or to successive actions.

This being the basis for the recognized exceptions to the general rule that damages are recoverable only up to the time of the commencement of the action, the rule is to be applied in actions on contract where the breach for which the action is brought does not put an end to the contract, but the contract continues to be a subsisting obligation for the breach of which successive actions may be maintained. In 1 Sedgwick on Damages (9th ed.) 89, it is said:

> "A single act of the defendant may be of such a nature as to give rise to a continuous breach of his contract with the plaintiff which, however, the defendant may bring to a close by resuming performance. In such a case each moment during which the injury is allowed to continue is really a new breach, and if action is brought during the continuance of the injury, compensation can be recovered for such loss only as is caused before the beginning of the action."

An illustration of the application of this rule is to be found in the Connecticut case of *Phelps* v. *New Haven, etc., R. Co.*, 43 Conn. 453, an action on an agreement by a railroad company forever to keep in repair certain cattle-passes under the track of its road for the benefit of the owner of the land, wherein it was held that the plaintiff could recover damages for the defendants' neglect

to keep the passes in repair only up to the time of bringing the suit. In delivering the opinion of the court, Park, C.J., said:

> "The nonfulfillment by the defendants of their continuing obligation to keep the cattle-passes in repair, manifestly occasions continuing injury as time progresses. The obligation is continually broken, and hence the injury is continually occurring. Where this is the case, new actions for new injuries may constantly be brought."

The application of the general rule to actions on contracts where there was a continuous breach, and not a total breach of an entire contract, is also illustrated by the following cases:

Powers v. *Ware*, 21 Mass. (4 Pick.) 106;
Pierce v. *Woodward*, 23 Mass. (4 Pick.) 266;
Fay v. *Guynon*, 131 Mass. 31;
Parker v. *Russell*, 133 Mass. 74;
Albey v. *Weingart*, 71 N. J. L. 92;
Moore v. *State*, 48 N. Car. (3 Jones L.) 215.

The rule has been applied, but, unfortunately, without discussion, in at least two cases decided by the Supreme Court of the United States. In *Bradley* v. *Washington, etc., Steam-Packet Co.*, 34 U. S. (9 Pet.) 107, an action of assumpsit for the hire of a steamboat, it was held that the plaintiff could recover damages only up to the time of the institution of the suit. In *Wicker* v. *Hoppock*, 73 U. S. (6 Wall.) 94, it was said in the course of the opinion (p. 99) that, in a suit upon a contract of indemnity, the obligee can recover only to the extent of the injury he has sustained up to the time of the institution of the suit.

For the same reason, the general rule is also applied in an action of tort when the action is

brought for a wrongful act which gives rise to a continuous series of torts which can be brought to an end by the defendant discontinuing the act, and damages can be had only for loss caused before the bringing of the action. This is in analogy with the rule which is to be applied, as shown above, in actions for partial breaches of contract. In 1 Sedgwick on Damages (9th ed.), p. 91, it is said:

> "Just as a single wrongful act may give rise to an indefinite number of breaches of contract, so it may give rise to a continuous series of torts which can be brought to an end by the defendant discontinuing the act. . . . If in such case action is brought, compensation can be had only for loss caused before the bringing of the action."

It is not too much to say that, in an action at law to recover damages for a nuisance of a temporary, recurrent and removable character, the authorities are unanimous in support of the rule that the plaintiff can recover damages only to the time of the commencement of the action. 29 Cyc. 273 and cases cited.

And the rule has been applied in many tort cases and in greatly varying circumstances. The following cases will furnish illustrations:

Denver City Irrigation & Water Co. v. *Middaugh*, 12 Colo. 432;
Savannah, etc., Co. v. *Bourquin*, 51 Ga. 378;
Bailey v. *Heintz*, 71 Ill. App. 189;
Catlin Coal Co. v. *Lloyd*, 109 Ill. App. 122;
Gebhardt v. *St. Louis, etc., R. Co.*, 122 Mo. App. 503;
Troy v. *Cheshire R. Co.*, 23 N. H. (3 Fost.) 83, 101;

Brewster v. *Sussex R. Co.*, 40 N. J. L. (11 Vroom) 57;
Church v. *Patterson, etc., R. Co.*, 66 N. J. L. (37 Vroom) 218, 231; 68 N. J. L. (39 Vroom) 390;
Blunt v. *McCormick*, 3 Denio (N. Y.) 283;
Uline v. *New York Central, etc., R. Co.*, 101 N. Y. 98, 109-116;
Park & Sons Co. v. *Hubbard*, 134 App. Div. 468; 134 N. Y. 468;
Duncan v. *Markley*, 1 Harper (S. Car.) 276;
Iron Mountain R. Co., v. *Bingham*, 87 Tenn. 522, 536;
Cobb v. *Smith*, 38 Wis. 21, 36;
Hadler v. *Griebew*, 61 Wis. 500.

It is only in North Carolina that we find any authorities in conflict with the foregoing decisions; it is there held that, under the present practice in that state, damages may be recovered in a case of continuing trespass to the time of trial. *Pearson* v. *Carr*, 97 N. Car., 194. But this results from the interpretation of a provision of the code, and is recognized to be a departure from the common law. 1 Sedgwick on Damages (9th ed.) p. 154, note.

The wrongful combination or conspiracy in the case at bar is a continuing wrong of a temporary, removable, character for which successive actions may be maintained from time to time as damages accrue. Obviously it is not distinguishable in this respect from trespasses and nuisances which are not of a permanent nature. The plaintiffs should therefore have been limited in their recovery to the damages which had accrued at the time when the action was commenced.

We therefore contend that the trial court committed reversible error in admitting evidence as

to damages accruing subsequent to the commencement of the suit, and in permitting the jury to take this evidence into consideration in arriving at their verdict. On this ground alone, if there were no other errors in the case, it would be the duty of this Court to remand the cause for a new trial.

V.

Conclusion.

Even though this Court may be satisfied that the record shows that illegal acts had been done by officers and agents of the United Hatters who are not defendants, the case which the plaintiffs attempted to make out against the defendants in the suit is so replete with errors in the charge of the court to the jury, in the refusals of the court properly to instruct the jury and in the rulings of the court admitting incompetent and prejudicial evidence that there should be a reversal and the case remanded for a new trial.

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No. 358.

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IN THE

Supreme Court of the United States

October Term, 1914

MARTIN LAWLOR, *et al.* (*Defendants*),
Plaintiffs-in-Error.

vs.

DIETRICH LOEWE and MARTIN FUCHS, Partners under the firm name of D. E. Loewe & Co. (*Plaintiffs*),
Defendants-in-Error.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR DEFENDANTS-IN-ERROR

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Supreme Court,

OF THE UNITED STATES.

MARTIN LAWLOR, *et als.*
Plaintiffs-in-Error
(Defendants below),

against

D. E. LOEWE and MARTIN FUCHS, partners, under the firm name of D. E. Loewe & Co.,
Defendants-in-Error
(Plaintiffs below).

BRIEF FOR DEFENDANTS-IN-ERROR.

This case has been twice tried to a jury with substantially the same evidence and substantially the same result as to verdict and judgment. It is now before this Court on writ of error of defendants below from judgment of affirmance of the United States Circuit Court of Appeals for the Second Circuit. The parties are hereinafter refered to as plaintiffs and defendants in accordance with their status before the trial Court. Most of the brief of the defendants is an analysis of the evidence accompanied with an argument which in effect attacks the sufficiency of the evidence. As

there was no request to direct a verdict, the case is not reviewable in that particular.

Slocum vs. *N. Y. Life Ins. Co.*, 228 U. S., 369;
Erie Co. vs. *Winter*, 143 U. S., 66;
Herencia vs. *Guzman*, 219 U. S., 44;
Texas & Pacific R.R. Co. vs. *Harvey*, 228 U. S., 325.

In order to meet the defendants' distorted statement of the facts and to show the bearing of the points of law discussed, we preface our brief with a detailed statement of the evidence.

At the outset and during the examination of this case, these points should be borne in mind:

1. All evidence of acts and declarations in furtherance of the unlawful combination was substantially uncontradicted and the only question of fact really contested at the trial was which of the defendants were members of the combination.

2. By their practices and organic law from the date of their organization, The American Federation of Labor and the United Hatters as one of its constituent parts and the defendants as members of each were pledged to interstate boycotting.

3. From the date of the formation of these organizations extraordinary means of publicity were adopted through official journals, newspapers, printed convention proceedings and reports at meetings and conventions to acquaint all members with the boycotting activities and particularly the attack on the plaintiffs. To such an extent was this true, that the Court of Appeals on the first appeal (187 Fed., 528), said that the jury might draw conclusions from it "as to what any man

of ordinary intelligence would expect might be done by these bodies or by their agents whenever occasion for action might arise."

4. Every defendant contributed to the large expenses and wages of those who actively carried out the boycotting objects of the associations under circumstances which compelled the belief that he knew the uses to which this enormous sum of money was being put. If any defendant was ignorant of what was being done for his benefit in pursuance of the constitutional purposes of the association, it was because he wilfully shut his eyes to the ever-present sources of information which confronted him.

5. The cumulative character of the evidence and the ramifications of the conspiracy as proven, make it practically impossible that the erroneous admission of any one bit of evidence should constitute a substantial, prejudicial or reversable error.

It has been freely admitted by defendants' counsel that the Court's demeanor at the trial was fair, courteous and impartial, and any contrary insinuations now made in their brief are advanced without sincerity and negatived by examination of the record as a whole.

Statement of Facts.

In reviewing the facts, we first deal with the conspiracy in restraint of interstate trade and then discuss the relation of the individual defendants to it. The folios referred to are only part of the several places where most of the facts are cumulatively established.

COMBINATION IN RESTRAINT OF INTERSTATE TRADE.

The plaintiffs are the sole partners in the firm of D. E. Loewe & Co., doing business as manufacturers of soft fur hats in the City of Danbury and State of Connecticut. The co-partnership between plaintiff Loewe and various other partners has been continuously in existence with the same trade name since 1879 (fol. 3869). Plaintiff Martin Fuchs joined the firm in 1885 (fol. 3870). Since some time in 1901 the two plaintiffs have been the sole partners (fol. 3871).

At the time of the direct attack made by the defendants upon the plaintiffs' business, July 25th, 1902, as hereinafter set forth, the plaintiffs had built up an annual business in the manufacture and sale of its products to the amount of $432,000 in 1900, and $464,000 in 1901 (fols. 4276-80), and all of said business except the amount of a few thousand dollars per annum represented sales in the course of interstate trade to customers in States other than the State of Connecticut (fols. 4169-4202). The sales to the Empire Hat Company with its office in Connecticut, were for interstate trade exclusively (fol. 3770). The record shows an itemized statement of the aggregate amount of sales per annum to each customer of the plaintiffs during the years 1900 to 1904, inclusive (fols. 4169-4234). At the time of the defendants' attack in 1902, the plaintiffs employed about 246 persons (fol. 3902), 46 of them being women (fol. 3903), and employed in the business about $130,000 capital (fol. 3904). The average output of the plaintiffs' factory was 150 dozen hats per diem (fol. 3898), and the hats in daily

process in various stages of completion were over 1,000 dozen (fol. 3895). During the year 1901, which was the last complete fiscal year preceding the attack of the defendants and the last opportunity the plaintiffs had of ascertaining their profits or losses prior to said attack, the plaintiffs made a net profit of $27,700 (fol. 4283).

The individual defendants are all members, and some of them are officers, of a voluntary association or trade union of journeymen hatters, known as the United Hatters of North America, comprising more than 9,000 journeymen hatters, residing in different States of the United States or in Canada (fol. 134). Part of the members of said United Hatters are engaged in those branches of the manufacture of fur felt hats known as the making or sizing of fur felt hats, which constitute the earlier processes in the manufacture of said hats. The remaining portion are engaged in the work known as finishing, which constitutes the various processes through which the hats are put after they have left the sizing and making departments. Prior to 1896 the finishers belonged to a separate national organization of finishers and the makers belonged to another separate national union of makers, and in the year 1896 these two organizations amalgamated into what is now known as the United Hatters of North America (fols. 4405-8). Said United Hatters is subdivided into twenty Local Unions, of which each is by itself styled "Local Union No. . . ." of the United Hatters of North America. Half of said local unions are composed of makers and half of finishers.

Local Union No. 1 is the local makers' union of Bethel, Connecticut, and in 1902 had a member-

ship of 250 (fol. 303). Local Union No. 2 is the local finishers' union of Bethel, Connecticut, and in 1902 had a membership of 300 (fol. 236). Local Union No. 10 is the local hat makers' union of Danbury (fols. 387-91), and in 1902 had a membership of 1,400 (fol. 7153). Local Union No. 11 is the local hat finishers' union of Danbury, and in 1902 had a membership of 1,300 (fol. 337). Local Union No. 15 is the local hat makers' union of Norwalk, Connecticut, and in 1902 had a membership of 240 (fol. 317). Local Union No. 16 is the local hat finishers' union of Norwalk (fol. 4) and in 1902 had a membership of 240 (fol. 15). Over 3,000 members are therefore in Connecticut.

Each of the defendants filed a separate answer to the complaint and with the single exception of Martin Lawlor, expressly admitted therein that at the time of the commencement of the suit he was a member of one of said locals either in Danbury, Bethel or Norwalk. Subsequently at the trial (fols. 254-73), all the defendants expressly admitted in the record that they had been such members in good standing at the time of the formation of the United Hatters in 1896 and for many years prior thereto; that they had continued such membership down to the time of the trial and had paid their dues continuously both to the United Hatters and their local unions during such membership so far as required by their constitutions (fols. 6781-92). Said dues were paid weekly to an official of the local union in each factory known as the Steward, who in turn delivered all moneys collected, less certain commissions retained for his services, to the treasurer of the appropriate local union (fols. 450-1). The treasurer of the local union thereupon retained a certain

fixed percentage of said moneys for the use of the local union, and transmitted the balance thereof to the secretary of the United Hatters of North America (fols. 305-7; 340-41). The dues were a percentage of each member's earnings. From 1898 down to May, 1905, the United Hatters of North America published monthly, with some few omissions, an official organ called the Journal of the United Hatters of North America, which was authorized by general vote of its members and conventions (fols. 18; 182-4; 1398-1403, 1406), and paid for by the organization (fols. 7388-7400), and was the official mouthpiece of all the defendants. The editor of this journal was the president, John Moffitt. It contained accounts of all official business transacted by the Executive Committee and General Executive Board of the United Hatters, the names of the directors and officers of the United Hatters, the secretaries of the different local unions, the dates of holding meetings of the respective local unions, reports from the respective local unions as to all matters pertaining to the trade and the organization (fols. 1398-1403), and, as hereafter shown, the accounts of strikes and boycotts conducted by the organization, including special reports of all traveling agents specially deputized to conduct the boycotts. Convention proceedings containing boycotting reports were also fully published in a separate pamphlet and both journals and convention proceedings were distributed among the members in the factories (fols. 13-20; 233-37; 301-4; 6893-99; 7152-59). Enough copies were printed to supply about 65 per cent. of the membership (fols. 7388-7400).

The United Hatters also owns and controls a union label adopted in 1885 (fols. 4407-08), before

the amalgamation, which label is attached under the sweat band opposite the bow in stiff and soft felt hats manufactured in factories which employ members of said United Hatters exclusively in the making and finishing of hats (fols. 405; 506; 512). Defendants admitted that they knew large sums of money were spent to advertise this label, and emissaries of the United Hatters had been sent out through different parts of the country to induce dealers to buy hats containing said label to the exclusion of hats not bearing said label.

In 1896, which was the year when the United Hatters came into existence by the amalgamation of the National Makers and Finishers' Unions (fol. 4405), the United Hatters, through its officers, united with the American Federation of Labor (fols. 671-73), whose organization and operations in boycotting are fully detailed in the evidence. This affiliation with the Federation then became a part of the organic law of the United Hatters and was expressly inserted in the by-laws of the United Hatters (fols. 573-4; 504-5; 478).

HISTORY OF THE AMERICAN FEDERATION OF LABOR UP TO 1896.

As the United Hatters united with the American Federation of Labor in 1896, it becomes material to ascertain the character of that organization at that time. This federation of various trades in different States was first formed in 1881 (fol. 811). The first constitution, which has continued ever since with certain amendments adopted from time to time, provided in Article VI that

> "It shall be the duty of the executive council to secure the unification of all labor organ-

izations, so far as to assist each other in any justifiable boycott, and with voluntary financial help in the event of a strike or lockout, when duly approved by the executive council" (fols. 4445-46).

In subsequent years amendments were adopted changing the wording of this clause, and also providing for committees on boycotts (fols. 1052; 625-6). In 1895 amendments were adopted by the convention (fols. 1028-65), which were operative when the United Hatters affiliated with it in 1896 (fols. 1028-29). Article IX, Sec. 3, of the constitution, at that time provided that

> "The executive council shall also prepare and present to the convention in printed form a concise statement of the details leading up to approved and pending boycotts; and no endorsement for a boycott shall be considered by the convention, except it has been so reported by the executive council" (fol. 1052).

This provision was still a part of the constitution at the time of the commencement of this suit (fols. 842-43).

Sec. 4 of the same article contained the following provision, which has continued ever since:

> "While we recognize the right of each trade to manage its own affairs, it shall be the duty of the executive council to secure the unification of all labor organizations so far as to assist each other *in any trade dispute*" (fols. 1052; 626).

Sec. 3, Article III, provided for a committee on boycotts (fols. 1034-35).

The record, therefore, shows that this interstate federation of national extent was formed

for the purpose of conducting interstate boycotts, and has always had express provisions in its constitution for the execution of that purpose. The evidence which follows shows how fully and faithfully these boycotting provisions have been carried out in furtherance of the avowed end of establishing the closed shop (fols. 3180-82). It has been the principal industry.

The report of the 1886 Convention shows the following:

> "Resolutions in favor of boycotting the New York Tribune, The Cleveland Daily Leader and Evening News were adopted; also to support the Journeymen Bakers' National Union in their work of organization and to buy none but union made bread with the union label. The blue label of the Cigar Makers' International Union was unanimously endorsed as the only union label in that trade. *The indiscriminate and frivolous use of the boycott as a remedy on every trifling occasion was strongly condemned, and its careful and energetic use as a last resort when properly undertaken was most favorably endorsed;* also the formation of State trade assemblies was recommended" (fols. 4450-51).

At the convention in 1889, a resolution was passed instructing the secretaries of all affiliated unions who were scattered throughout the different states, "to report to the president every three months a list of the addresses of the secretaries of their respective local unions for the purpose of sending out boycott and other circulars when approved by the American Federation of Labor" (fol. 4564).

At the 1893 Convention, the Committee on Labels and Boycotts reported as follows:

"Taking into consideration the vast extent of territory comprising the United States, we believe that such measures should be taken which would make the boycotts declared at the convention effective. In order to do this, some centralization of effort must be made in the various localities directly interested in the several boycotts, as such efforts as would secure the desired results in one location would be so much waste energy if applied in another. Therefore, resolved, that the National bodies represented in the American Federation of Labor be requested to centre on a few of such firms as can be most effectively worked upon in the Eastern, Middle, South Western, and Pacific Coast States. Further resolved, that the secretary be instructed to forward the names of such firms to the trade papers which in their judgment will be most effective in the dissemination of such news as will tend to accomplish the end in view" (fols. 4565-66).

The convention of 1895 took action against seating a delegate from an affiliated union because

"this organization has flagrantly and persistently violated the by-laws and constitution of the A. F. of L. in refusing to endorse the boycott levied by the garment workers, as endorsed by the A. F. of L., and has also done all in their power to offset every boycott" (fol. 4454).

Before the action was taken

"The secretary stated that such action practically expelled the organization for refusing to endorse the boycott" (fol. 4454), but the action was nevertheless taken.

At the convention of 1893 a resolution was passed authorizing the publication of an official

monthly magazine (fols. 1016-18; 1020). At the convention of 1894, Mr. Gompers, as president, reported that pursuant to the resolution of the previous convention, the publication had appeared regularly each month since March, with good results both to the organization and the cause (fols. 1021-24). This federationist is controlled, edited, published and issued by "The American Federation of Labor" (fol. 689) and is in every sense the official mouthpiece of the Federation (fols. 682-84; 689-92; 702-3; 1347-8; 1021-4; 1308-16; 1356; 1399). About 9,000 copies are published and circulated (fols. 801-2), and these are sent to the organizers and the affiliated unions (fol. 1347).

Prior to the affiliation of the United Hatters with the Federation, in 1896, the Federation had been aiding it at its special request and instance in the prosecution of boycotts (fols. 1454-55; 4453), and a resolution was passed at the Federation convention in 1896 to the effect that the Hatters should immediately affiliate with them. The United Hatters therefore affiliated with this organization having a boycotting constitution, by filing application for affiliation through President Moore, Vice-President Moffitt, Secretary John Phillips, and other officers. This application which was in usual printed form stated that the hatters' membership was 6,000. It pledged the membership as follows:

> "We hereby pledge ourselves individually and collectively to be governed by the constitution, rules and usages of the American Federation of Labor" (fol. 673).

For some reason unexplained, a new charter was applied for in June, 1903, in which the same

pledge of adherence to the federation's constitution and rules is made, and in which the total membership of the union is placed at 9,000. The application for this charter was made by defendant Martin Lawlor and by William C. Hennelly, John A. Moffitt, John Phillips, James P. Maher, Charles J. Barrett and Morris Carmody (fols. 675-81). After the affiliation of the United Hatters with the A. F. of L., a clause was placed in the constitution of the United Hatters, providing that

> "The delegates and alternates to the A. F. of L. convention from the United Hatters of North America, shall be elected by a referendum vote of the general membership; nominations to be filed with National Secretary, not later than July 1st of each year in order that the elections may take place in the month of August. The place where the different meetings of the local associations held for this purpose, and the time of such meetings, to be the time and place for the taking of such vote" (fols. 573-4; 504-5).

It was also provided that

> "All local associations are instructed to become connected as soon as possible with the central labor unions, A. F. of L. organizations trade assemblies or other central labor organizations in their respective localities" (fol. 478).

At this 1896 convention, which the hatters' officers attended as delegates (fol. 1110), a resolution was passed pledging support to the hatters' label and agreeing to buy no hats without it (fols. 1112-14; 4575-77).

The committee on labels and boycotts, of which

Phillips, Treasurer of the Hafters, was chairman, reported many special boycotts in many different states (fols. 4488-92), and the report was adopted as a whole.

At the following convention of the A. F. of L. in 1897, the United Hatters was repesented by its officers, John A. Moffitt and Edward Moore (fol. 653).

At this 1897 convention, the Executive Council reported as follows:

> "During January, 1897, we had on our November list 83 firms. During the year 17 were declared unfair by the Executive Council. Ten of this number have been adjusted and removed to our fair list. Since the conventions in the past have placed most of these concerns on the unfair list, it is submitted that greater caution in this regard should be observed in the future. We feel that in order to attain the greatest degree of success, we should concentrate our efforts upon a few of the concerns which have proven themselves unfair." (Fols. 1284-5.)

At the convention of 1898, the United Hatters was represented by defendant Martin Lawlor and W. F. Lee (fol. 654), and the Connecticut State Federation of Labor, to which all defendants belonged and contributed, by defendant Hugh C. Shalvoy (fol. 6892).

At the convention of 1899, the United Hatters was represented by James P. Maher and defendant John W. Sculley (fol. 656). The Connecticut State Federation of Labor was represented by defendant Lawlor (fol. 24). At this convention the president referred to the fact,

> "that the weekly labor press has an influence far beyond the membership of the organization of the locality in which it is published. * * * In cases of strikes, boycotts or lockouts, it is the only weapon in the field of publication the toilers have—it is the only avenue through which their grievances can be truthfully presented to the public." (Fols. 1319-20.)

Defendant Sculley was placed upon the committee of labels and boycotts (fol. 23), and introduced the resolution passed at the instance of the United Hatters, calling upon all affiliated unions not to patronize any dealer who handled hats of F. Berg & Co., or any other non-union hatter, and so pledged themselves (fols. 26-30). The resolution was adopted (fol. 111) and its national and interstate character extending to all the local and national unions in all states is to be noted. It was later reported to the 1900 convention of the United Hatters by their president (fols. 111-13). At this convention Mr. Gompers reported upon "Boycott—the Right and Practice", and stated:

> "We realize how necessary it is to employ so powerful a weapon with the greatest care and discretion." (Fol. 1068.)

He recommended to the serious consideration of the delegates his article in the October, 1898, number of the America Federationist, entitled, "The Boycott as a Legitimate Weapon" (fol. 1071). In this article (fol. 1077) he says:

> "You may threaten to take your custom away from them and assign any reason you choose. * * * It follows beyond all question that you have a perfect right to threaten to withdraw your custom. The principle is

> the same whether you threaten one man or a hundred men; whether you are alone in threatening the withdrawal of your custom or are a member of a vast combination of people acting together in the premises." (Fol. 1090.)
>
> "Workmen have a right to say that they will not patronize those who are unfriendly to them and those who support their adversaries." (Fol. 1097.)

The committee on president's report endorsed the president's position (fol. 1070) and their report was adopted (fol. 1071).

At the convention of 1900 of the Federation, the United Hatters was represented by Charles J. Barrett and defendant P. H. Connelley (fols. 656, 7149). The Connecticut State Federation of Labor was represented by an officer of the United Hatters, James P. Maher.

At the convention of 1901, the United Hatters was represented by Frank Shalvoy, and defendant W. P. Bailey (fol. 656).

The defendants W. P. Bailey and F. P. Shalvoy introduced a resolution of the same form and interstate character as that introduced in 1899 against F. Berg & Co., and after reciting the antagonism of the Roelofs concern in libelous terms, resolved "not to patronize any dealer or dealers who handle the products of non-union hatters, and particularly of H. H. Roelofs & Co." (Fols. 238-44.) This resolution was secured by direction of the General Executive Committee of the United Hatters and reported to the convention of 1903 by the president (fols. 150-4). It was printed in the convention proceedings of the

American Federation and the United Hatters, as well as the Journals (fols. 152-3; 1628-30).

After that the concern of Henry H. Roelofs appeared on the unfair list of the Federation and United Hatters until it became unionized by the United Hatters in July, 1902 (fols. 991-2), and the resolutions boycotting all dealers in non-union hats was never repealed.

The size, ramifications and growth of the Federation are fully set forth in the record (fols. 4569-70). In 1900 it had over one million members, 82 National unions, 16 State Federations, and 206 City Central Labor unions (fols. 688-89). In 1901 it was considerably larger (fols. 1291-92). Its size at the time of the commencement of this suit is shown by the report of defendant Lawlor when officially representing the American Federation of Labor in England. His report in part is as follows:

> "We now have affiliated to the A. F. of L. 110 International trade unions, with about 22,000 local unions under their jurisdiction, 29 State Federations, 520 City Central labor unions, and 1,725 local trade and federal labor unions—in all fully 2,500,000 wage workers organized and affiliated to our parent organization. This phenomenal growth of the trade union movement in our country is largely due to the able and efficient leadership of that great champion of labor's rights, President Samuel Gompers, of the A. F. of L." (Fol. 886.)
>
> "Our international unions have, besides their executive officers, approximately 500 organizers on salary, and the A. F. of L., in addition to its forty-five salaried organizers, has a corps of over 1,100 volunteer organi-

zers to whom I have just referred." (Fol. 888.)

"Nearly all our international unions have their official weekly or monthly trade journals. Fully half the central bodies publish a labor paper, and the apex is reached in that grand publication of the A. F. of L., the 'American Federationist', copies of which, I am informed, you are in frequent receipt." (Fol. 889.)

The 1,100 organizers are located throughout the leading cities in the different states of the United States, and each reports to the central office at Washington, D. C. (fols. 918-44). Among these organizers of the Federation were the principal boycott agents of the United Hatters (fols. 946, 2546).

The variety of affiliated national unions covers about 100 different industries in different states (fols. 895-917). The 529 central councils represent all the local unions of a particular city or county, so that their combined force can be turned against any dealer who patronizes a boycotted concern, while the 29 state federations centralize all the unions of the state with the same force and effect.

The evidence shows that this great interstate combination of which the United Hatters became deliberately a part, not only pursued this practice of boycotting frequently, but as one of its fundamental and leading activities. The position of the combination upon the subject of boycotting is stated in a number of editorials by Mr. Gompers published in the American Federationist, and these editorials, according to Mr. Gompers, adhere "to a strict advocacy of such princi-

ples and policies upon which trade unionists are agreed." (Fol. 1021.)

One of these editorials, published in the November, 1902, Federationist, states:

> "The A. F. of L. will never abandon the boycott. * * * The unions are asked not to patronize those hostile to organized labor. In addition they are asked to solicit the aid and co-operation of their allies and sympathizers. Why, this may spell ruin and bankruptcy to the boycotted! Certainly it may. * * * The policy of the boycott, therefore, is the policy of liberty, of equal liberty. It deprives no one of anything to which he is entitled. A man's patronage is his own to give or withhold as he sees fit, and it is absurd to demand of organized labor, and of the friends of organized labor, that they shall patronize their enemies and discriminate against their well wishers" (fols. 1132-39).

At each of the conventions, at which some defendant was always present, a large number of concerns were reported by the Executive Council as being boycotted and the boycotts were ratified and approved (fols. 1287-88). The many hundreds of interstate boycotts conducted by the American Federation of Labor (fols. 950-1012; 1147-1244; 1249-89), the admission that each number of the American Federationist down to 1903 contains a long list of the boycotted (fols. 1287-88), the 1,100 organizers in all the states of the country from the "Atlantic to the Pacific" making reports in every number of the American Federationist that they are pushing *all* Federation boycotts in each state (fols. 1147-1244)—all these facts show that the most absorbing activity

of the American Federation of Labor is the conduct of *interstate* boycotts, pursuant to the express provisions of its constitution, and that no city in the United States is so remote that its victims can there do business without feeling the power of its crushing machinery which is concentrated and directed through state federations, city councils and local unions, all organized and adjusted for the speedy accomplishment of its ruinous ends. No further proof is necessary to demonstrate the inherent and fundamental illegality of the interstate operations of this interstate combination, but there is cumulative evidence tending to summarize the whole situation. When this case came before the United States Supreme Court upon a demurrer to the complaint, the American Federation of Labor, through its president and secretary, filed a petition to intervene in which, among other things, they stated:

> "That the said United Hatters of North America, mentioned in said complaint, is one of the voluntary associations constituting said membership; that petitioners are financially and otherwise interested in the decision of the above-entitled case and *that a decision herein in favor of the plaintiff in error would seriously obstruct and hinder the said American Federation of Labor, petitioner, in carrying out the purposes for which it was organized,* and destroy, at least to some extent, its usefulness to its members, and would likewise and in a like manner injure said members; that the constitution of said American Federation of Labor, petitioner, makes special provision for the prosecution of boycotts so-called when instituted by a constituent or affiliated organization as is described in the complaint filed in the district court by

> the plaintiff in error herein through the agency and pursuant to the approval of the executive council of petitioner. * * * That under the provisions of said constitution, many so-called boycotts have been and several are now being prosecuted by petitioner pursuant to approval of its executive council" (fols. 744-46).

During all this time the delegates and alternates from the United Hatters to the conventions of the American Federation of Labor have been regularly nominated and elected by referendum vote pursuant to the constitution and laws of the United Hatters and the United Hatters have paid dues to the Federation. These delegates, as committeemen or otherwise at the convention, have constantly reported and voted on hundreds of interstate boycotts.

The local unions have also followed the instructions of the national hatters' constitution and affiliated with, and contributed to, central labor unions and the Connecticut State Federation of Labor and have taken part in the election to the conventions of the American Federation of Labor of those delegates who represented the Connecticut State Federation, and defendants have acted as delegates from the State Federation (fols. 7015-17; 7107-9).

The American Federation of Labor, both in the printed proceedings of its conventions, and in its official magazine, published accounts of the fights of the Hatters' Union as a constituent part of its combination (fols. 3845-48; 4403-14; 4429-37; 1384-97; 4481-86; 4715-16) and reported on the number of boycotts won and lost by the Hatters (fols. 1395-97). It declared boycotts for the Hat-

ters as far back as 1891 (fols. 1454-55). The United Hatters published and aided the other boycotts of the American Federation of Labor (fols. 1650; 1821-22).

In the list of the organizers of the American Federation of Labor were included Felix J. O'Hare, D. P. Kelly, James Byrne, William Hennelly and James P. Maher, the active boycotting agents of the United Hatters (fols. 946; 2541), so that there was constant and continuous co-operation between the United Hatters and the Federation in the prosecution of boycotts.

The next step is to show how the Hatters' Union, through its own special agents, aided and directed this interstate boycotting machinery of thousands of affiliated unions in different states against the sale of all hats not bearing the union label, and against the interstate trade of the factories they were fighting.

BOYCOTTING OPERATIONS OF THE UNITED HATTERS.

In reviewing this evidence it should be remembered that nearly every quotation we give is taken from the Hatters' Journal, where it was printed and circulated among the members.

Boycotting circulars were repeatedly issued by the United Hatters of North America since the amalgamation in 1896, and were sent out through different states (fols. 6934-61) down to the time of this suit (fols. 6952-53). These circulars were sent out in one instance throughout the country at least to the number of 75,000 "calling attention to some of the worst scab shops in the country" (fol. 372). They requested the unions addressed

to "appoint committees to visit the retail hat dealers and inform them that members of labor organizations and their friends are not obliged to purchase hats from people who handle the goods of the above-named firms or of any other firms who run foul or non-union shops" (fol. 6937). The June number of the American Federationist for 1900 published a similar circular of the Hatters, calling attention to the non-union concerns (fols. 1384-89).

In the Official Hatters' Journal of August, 1898, under the title of "Our Label—Its Effectiveness, and the Generous Support Given by our Sister Organizations," appeared the report:

> "The great amount of work done by our Secretary is not known to a large majority of our members. Very few of them know that he sends out two or three hundred letters a week *to the labor unions of this country*, calling their attention to foul hats that are being sold in their neighborhood. That these letters have a most convincing effect on union and non-union manufacturers will be seen from a few letters printed here that have been received from dealers and trades unions within the last few days" (fols. 1413-14).

Certain letters follow from dealers in different states indicating that they would comply with the union's wishes not to handle certain non-union hats. The report continues:

> "The following unions notified the secretary that they would call on the firms handling non-union hats and inform them if they continue handling them union men will go somewhere else when it wanted to buy hats" (fols. 1418-19).

Here followed the names of some fifteen labor unions of different states and trades (fol. 1419). The report then went on to state that the San Francisco Labor Council sent a notice of its action to its affiliated unions as follows:

> "Commuication was received from United Hatters of North America stating that K. Meusdorffer & Son, 8 Kearney Street, were selling large quantities of scab-made hats, and requested the members of organized labor, when buying hats from Meusdorffer, should insist on hats carrying the union label; also inform them that unless they discontinued to carry scab hats, the patronage of union labor will be withdrawn from them. Request granted and delegates urged to bring the matter to the special attention of the members of their unions as by increased agitation and persistent enforcement of the union label the fight of organized labor for better conditions is very much advanced" (fols. 1420-21).

The report added:

> "The foregoing list of letters ought to convince some of our sceptical members that it is the label and not their skill as craftsmen that makes it possible for our organization to protect their rights" (fol. 1421).

In the Journal for September, 1898, under the title "Our Label", appears the following report:

> "In the last issue of the Journal, we said our members were not aware of the great amount of work that our secretary is doing by corresponding with the labor organizations of the country, asking them to help us unionize the unfair factories by calling on the dealers who handle their hats and asking them to discontinue using them until the

> firms that make them put a genuine union label in them. We gave letters from both the unions and the dealers showing how effective that work is. But better even than that showing is the record of sixteen non-union factories made fair in eighteen months * * * as will be seen from the numerous letters from the unions in reply to letters from our secretary asking them to appoint committees to call on the store keepers selling foul hats and notify them that union men could not patronize anyone who deliberately gave assistance to its enemies, every section of the country was covered" (fols. 1428-30).
>
> "*Often the unions are notified before the goods are shipped and frequently their committees induce the dealers to countermand the orders*" (fol. 1432).

These reports show to what extent the United Hatters were already relying upon the various affiliated unions of the American Federation of Labor in different states to aid them in interstate boycotting as early as 1898. The communication of the San Francisco Labor Council shows how a city council composed of all the unions in that city may operate to enforce a boycott by all of those unions against a single dealer who persists in handling unfair hats. *Thus interstate boycotting had already compelled sixteen factories to unionize.*

In the Journal for October, 1899, for the first time appears the reference to the fight against F. Berg & Son (fols. 1476-85). Full accounts of this strike thereafter appear in various numbers of the Journal, showing the attack on its customers in different states, until the factory is unionized in May, 1900. But the best account of the operations against this factory appears in the report

of President Moffitt at the convention of the United Hatters in 1900. The fight was started by a strike of 500 members of the United Hatters (fols. 66-68). The National Board of Directors took up the matter and decided to use all fair means in their power to make the factory union (fol. 74). In this report to the convention of 1900, Mr. Moffitt said the committee has decided to send

> "missionaries to different parts of the country to fight Berg hats in particular and to advertise the union label in general. Your committee at Orange being in possession of the all-important information in matters of this kind as to where shipments were being made from the Berg factory, decided to send missionaries to the following central localities: San Francisco, Cal.; New Orleans, La.; Atlanta, Ga.; Louisville, Ky.; Cincinnati and Cleveland, O.; Milwaukee, Wis.; Detroit, Mich.; Des Moines, Iowa; St. Paul, Minn.; St. Louis, Mo.; Omaha, Neb.; Denver, Colo.; Butte, Montana; Chicago and Galesburg, Ill.; Pittsburg, Pa.; Massachusetts; Rhode Island; Richmond, Va.; Nashville, Tenn.; and Mobile, Ala. This was done, and these missionaries had been out but a short time when beneficial results of their work were shown in the increase of orders received by the fair factories, which were soon working at their fullest capacity, while the non-union factories were practically at a standstill, and the former enormous output of the Berg factory, averaging 2,400 dozen hats a week, had been reduced to something like 450 to 500 dozen a week" (fols. 102-4).

The interstate operations against the interstate trade of Berg is again shown by the enumeration of states and cities. Mr. Moffitt also re-

ports how the American Federation of Labor took up the fight and at its convention of 1900, when the hatters' delegates were present, passed resolutions which closed as follows (fols. 111-14):

> "Resolved, that we call upon all the international, national and local unions affiliated with the American Federation of Labor, to give all assistance possible to the United Hatters of North America in the unequal fight they are at present so manfully making against wrong and oppression, and we hereby pledge ourselves not to patronize any dealer or dealers who handle the product of non-union hatters and more particularly the product of the firm of F. Berg & Co., Orange, N. J."

This resolution was reported to the Hatters' Convention and subsequently published and circulated among the members in the Hatters' Printed Convention Proceedings and their Journal (fos. 1514-16). Mr. Moffitt further reported to the convention of 1900 concerning the result of this boycotting resolution, and said:

> "This friendly action of the A. F. of L. committing every affiliated trades union in the country to co-operate with us * * * was productive of the greatest good to our cause. * * * So general and hearty has been the sentiment with which our cause has been approved and *aided by labor unions throughout the United States*, that time and patience of the convention forbid me making individual acknowledgment of the assistance our organization has received from these organizations" (fols. 114-16).

The concern of Austin & Drew, in Orange, attempted to do work for Berg, and the committee decided to call out the entire shop's crew and re-

move the label (fols. 1505-7) unless the firm agreed not to repeat the offense. The Volk Hat Company of Norwalk was attempting to sell some of the Berg hats and was threatened in the same way (fols. 1506-7).

At the convention of 1900 the committee on president's report said:

> "In view of the splendid results so far accomplished in the fight against the firm of F. Berg & Company, your committee heartily recommend that this convention endorse the action taken in that struggle by the General Executive Board and Board of Directors and recommend the continuance of the fight until such time as the firm of F. Berg & Co. shall sue for peace and make unconditional surrender to the United Hatters of North America" (fol. 1560).
>
> "All the delegates voted in the affirmative" (fol. 1560).

After this report of Mr. Moffitt's he was unanimously re-elected President (fol. 185).

Edward McClintock, acting as an agent, reported in the south that he had visited 20 labor organizations and that "committees were at once appointed to visit every retail hatter in town and notify them to get union hats" (fol. 1535). The president "placed the following named members of the organizations on the road to do this work: Directors James Byrne at San Francisco; Director T. D. McCarthy at New Orleans; Edward McClintock at Louisville, Ky.; Daniel McGrath at St. Paul, Minn.; Daniel Brady at Ohio, Upper Penn.; Vice-President Lawlor in Missouri, Nebraska and Colorado, and William Hennelly in the New England States" (fol. 1544).

> "Director Byrne succeeded in ridding San Francisco of all scab made hats, and the organizations—72 in number—in a population of 300,000 people, have promised that they will be sure and keep them out for all time in the future" (fol. 1545).

A conference was finally held between one of the Berg's largest customers, Rothschild Bros., of St. Louis, the building Trades Council and Central Labor Union of that city, and Vice-President Lawlor. Rothschild Bros. of St. Louis, declared that they "would not handle any more Berg hats until the fight was settled" (fol. 1549).

Other dealers were threatened with boycott if they purchased the Berg hats (fol. 1508) and the Georgia State Federation took up the boycott as against dealers in that state (fol. 1556). Jobbers were thus compelled to cancel orders (fol. 1532). The customers attacked are all in other states.

This general attack upon the Berg Company was supported by a 2 per cent. tax upon the membership (fol. 1531), and reports concerning it were made to the members of the unions at their various locals by the delegates. They report to these locals that "the committee in charge are about to send four men on the road to chase down his goods and asking the continuance of the 2 per cent. until the fight was finished' (fol. 281).

At another meeting, Daniel Brady, a director of the United Hatters, stated that they had "six men on the road creating opposition to Berg's hats" (fols. 287-88) and "in his opinion Berg was beaten, would soon give in" (fol. 288). A letter from the general secretary was read at these local meetings, which letter was sent to retailers and

jobbers in hats asking them to assist in the fight against Berg (fols. 333-34).

At another meeting Daniel Brady reported:

> "It was the intention to force Berg & Co. fair, and from the evidence he had received when he left Orange he was convinced that they were right and Berg & Co. will be forced to make their factory fair or go out of business. There are six men on the road working on the Berg & Co. hats. When he worked in Berg's he said they turned out 2,100 dozen hats a week and his profits were $30,000 a year, which is 5 per cent. on a business of $600,000 a year. The record in the past week was 69 dozen a day, or 483 for the week. It took 115 dozen a day to pay the running expenses of the Berg & Co. plant. He said he was satisfied that Berg & Co. was beat. There were 67 practical finishers in the factory and the rest were learners, and the practical men were employed fixing over what the others spoiled; that Berg had given orders to the foreman to press down on the men and get better work; as the floor walkers expressed it, that the hats were coming back like an army of ants" (fols. 350-1).

The fight against Berg lasted eleven months (fol. 137) and cost the union about $18,000 (fols. 7023; 7528). In his report at the convention of 1900, the president described in detail the Berg fight, as follows:

> "I would also urge upon the convention the importance of the work which has been done *upon the road in all parts of the country* by the missionaries sent out by the National Board of Directors, and recommend that at least six men be hereafter kept on the road advertising the union label and fight *the sale and use of non-union made hats*, these mis-

sionaries to be paid a salary to be fixed by the General Executive Board of the convention, and such salaries to be paid by a percentage tax to be levied upon the earning capacity of the general membership" (fols. 120-21).

This interstate system of fighting the sale of non-union hats in all parts of the country will explain the unionizing of many factories which defendants claim *unionized voluntarily*.

Immediately after the surrender of the Berg factory, six other concerns "lowered their colors" "with only a show of opposition" (fols. 141-42).

ATTACK ON HENRY H. ROELOFS & COMPANY OF PHILADELPHIA.

In April, 1901, a strike was inaugurated in the Roelofs factory (fol. 145) "to compel that firm to recognize the rules and regulations of the United Hatters of North America" (fol. 1592). The matter was taken up by the board of directors and referred with full power to the General Executive Board to assist the local unions in their fight (fols. 145-46). On the 7th of May, "the Executive Board *decided to fight the battle to a successful determination*" and placed the "president in charge to direct the movements *the same as was done by him in fights of a like nature*" (fols. 1601-2). Traveling agents were placed in the States of Ohio, Illinois, Indiana, Iowa, Minnesota, Texas, California and also some of the New England states and it was reported that "the returns were very encouraging and an early capitulation with Mr. Roelofs looked for" (fol. 1607). The operations were to be exclusively interstate, for no men-

tion is made of Pennsylvania, where Roelofs manufactured.

Defendant Daniel P. Kelly went to Seattle "to post the union men upon the product of Henry H. Roelofs & Company, makers of the much bought "Yeoman's hat" (fol. 1611). President Moffitt reports in the Journal for February, 1902, concerning the strike and the method of *conducting "the fight on the lines well known to the members of our organization"* (fol. 1619). Ten thousand circulars were sent out to organized labor throughout the country stating that conditions in the factory could only be tolerated in Siberia (fols. 1619-23). Agents were sent *"to different part of the country* where the Roelofs' hats were much in demand" (fol. 1623) and agent, W. Hennelly, who was "boycotting the scab concern of Henry Roelofs" (fol. 1603) in the North West, was out but a short time when a telegram was received by the unions from the largest hat jobber of St. Paul, Minn., "asking for a cessation of hostilities until such time as he could get to Philadelphia" (fol. 1624). A telegram was received on September 16th from two of the largest jobbers in the West asking the president to meet them in New York City. A conference took place which resulted in the decision of these jobbers to place no more orders with the factory until it was unionized (fols. 1627-28). Mr. Moffitt further said: "In carrying on this strike we have been enabled through the convention of the American Federation of Labor to enlist the sympathy *of all organizations* connected with that body" (fol. 1628). He stated that under the direction of the General Executive Board he secured the passage of a resolution by the American Federation of

Labor wherein the thousands of local unions scattered in different states boycotted Roelofs and all people who deal in non-union hats (fols. 1628-29). This was the same interstate resolution which was passed against Berg & Co. Mr. Moffitt then adds:

> "And later in the convention the General Executive Committee of the A. F. of L. declared a general boycott on the product of the non-union concern of Henry H. Roelofs & Company. The fight is being very aggressively carried on by our organization, and from present indications and reports from our agents on the road, I feel very confident that the end is close at hand" (fol. 1630).

The Federated Trades Council of Pittsburg placed six firms on the unfair list for the hatters (fols. 1639-40).

The secretary of the Local Hatters' Union in San Francisco reported the work of defendant Kelly and said:

> "Rest assured that he proved himself greatly detrimental to the interests of H. H. Roelofs & Company" (fol. 1647).

The Journal of February, 1902, also printed the unfair notice of the American Federation of Labor putting Roelofs' hats on the unfair list and requesting the Labor and Reform Press to copy (fols. 1649-50).

Agent Murphy, reporting from Buffalo on February 23, 1902, concerning his work, referred to the fact that

> "The Roelof hat is handled quite extensively in this city, seven of the largest firms using the goods (fol. 1651). Buffalo is thoroughly organized, and since all of the above-

> mentioned dealers depend on the laboring classes for the greater part of their trade, I feel confident I shall be successful in inducing them to not only write to Roelofs and request that he place the label on his hats, but also, if necessary, to give up handling the goods'' (fols. 1654-55).

Labor organizations were visited in Buffalo and induced to appoint committees (fol. 1655), and the Labor Council adopted resolutions requesting a ''dealer to cease handling the Roelofs' hats under a penalty, if not being complied with, of withdrawing our patronage'' (fol. 1658). Agent Murphy ''had no difficulty in having the different organizations adopt them,'' and sent a copy to each of the firms (fol. 1658). He enumerates 25 or 30 organizations he visited (fols. 1659-60).

Agent O'Hare, reporting in Nashville, Tenn., for February, 1902, stated:

> ''In visiting the following labor organizations, trade and labor council, building trades council, retail clerks' association, typographical Union No. 20, journeymen tailors' union, lathers' union, barbers' union No. 135, painters, plumbers and carpenters, I succeeded in having committees appointed from each of them to assist me in my work. The stores here that handle Roelofs' goods have, save one exception (Cooper & Co.) agreed to place no more orders for those goods until the strike is settled. Organized labor here is very anxious to assist the hatters, as they look upon the Hatters' Association the most progressive organization affiliated with the A. F. of L. In the case of Cooper & Co., the central labor body has taken up the fight against them and their finish is in sight. I will leave here according to your instructions for Memphis to-night, and will start in there

with a vengeance on the parties whom you wrote me about" (fols. 1661-63).

Defendant Kelly, reporting from Fort Worth, Texas, said:

> "Having completed a very successful campaign against the 'R' goods on the Pacific coast, according to your instructions, I crossed a great desert and arrived safe and sound in Texas. * * * Will get all the unions this week. They are meeting just right for me—three and four a night" (fols. 1664-5).

The Secretary of the Hatters' Labor Union in St. Louis reports in March, 1902, that

> "At the last meeting of the Central Trades and Labor Union of St. Louis, and of the central trades and labor unions of East St. Louis, the boycott of the Roelofs' hat was reindorsed and placed on the unfair list at the request of the St. Louis finishers" (fol. 1671).

In March, 1902, Hennelly made a long report from Marquette, Mich., stating he had spoken to quite a number of meetings of various unions (fols. 1675-76) and that all he had to do was "to visit the Central delegate body and one or two of the local organizations, bill the town, and every one by that time is aware of the nature of your business. Then they will do the rest" (fol. 1676).

Defendant Kelly went to Duluth a second time, stating as his reason for so doing that some dealers promise to comply with the requests for the purpose of getting rid of the delegate and then do not keep the request. "Some dealers," he said, "have had cause to regret such actions" (fol. 1677). The retail dealers in Duluth "have had it clearly demonstrated to them on one or two occa-

sions that organized labor meant what it said" (fol. 1677). When last in Superior, Wis., he found

> "two stores were handling goods from the Philadelphia concern whose product is so rapidly being put on the unfair list of every labor organization in the country. They were requested to discontinue buying from this unfair house by organized labor of Superior at this time. Upon arriving here this trip, I found both stores out of business for reasons I suppose best known to themselves and others" (fols. 1679-80).

He then went to Ashland, Wis., where he visited other unions and acquainted them with the hatters' troubles (fol. 1681).

Later he reports from San Antonio, Texas, stating that he "found three merchants handling Roelofs' goods and two of the merchants without hesitating, promised to discontinue their patronage until the house had squared itself with the hatters" (fols. 1685-86).

Delegate Lynch, of Philadelphia, reported that the State Federation of Labor of Pennsylvania had passed resolutions, "endorsing the trouble in Henry H. Roelofs' hat factory" (fols. 1688-89).

Defendant, D. P. Kelly, reports in the Journal for May, 1902, from Butte, Montana, and states:

> "In the State of Washington they are under the A. F. of L. This state is fairly well organized, but a lot of work can be done in that line yet. Seattle is the best organized. In that city I found them willing to do anything to assist the hatters. They informed me that they drove out the Berg hat when we

asked them, and would do the same with Roelofs' " (fol. 1694).

In Spokane, he says:

"I had a committee to assist me and was successful in one store and had another placed on the unfair list who refused to stop handling Roelofs' hats. The Central Body promised to look after him" (fols. 1695-96).

He then went to Portland, Ore., and from there to San Francisco, Cal., stating:

"Frisco Trades Council and Building Trades Council assured me of their support as did all locals in that city. I found twenty stores handling more or less of R's goods, but all promised to discontinue. The labor paper published a list of all stores with these hats in" (fols. 1697-98).

In Los Angeles, he found sixty locals affiliated with the central body and "had a committee appointed from the central body and visited the stores. They promised not to order any more hats of Roelofs until he was fair" (fol. 1698).

Agent O'Hare reports from Memphis, Tenn.:

"In visiting the different unions here, I have had the pleasure of giving Roelofs' and Yeoman hats a pair of black eyes and a broken nose" (fol. 1702).

Agent Murphy, reporting from Syracuse, New York, in April, names a firm in Rochester having three stores which handle Roelofs' goods, and stated that he agreed not to place any more orders. Mr. Murphy adds:

"However, I acquainted the labor organizations with the fact that he handled the

> goods; also concerning his promise. They instructed me if he broke his word to notify the central body, who would endeavor to entertain him" (fol. 1710).

Agent Byrne, reporting from Cincinnati in April, 1902, states that he had been to Pittsburg and "two of the largest department stores in Pittsburg have given up the Roelofs hat and have written letters to the labor unions to that effect" (fol. 1716). He persuaded a concern in McKeesport to discontinue patronage (fol. 1720). He visited Kentucky and saw that the hatters' interests were looked after by the trades and labor council of Covington (fol. 1723). He secured a union man to look after their interest in the Central Labor Union of Cincinnati. The labor assembly of Covington put one of Roelofs' customers on the unfair list (fol. 1724). The building trades and trades council of Pittsburg passed resolutions naming a number of Roelofs' customers, and requesting them to discontinue patronage under penalty of losing the patronage of organized labor (fols. 1731-34).

Defendant Kelly reports further from Texas that he had visited all the merchants and unions except the central council which he would visit later, and adds:

> "Roelofs' hats are not sold to any extent in this city and I think I can stop the few that are sold, as the merchants did not want any trouble with the unions. I have a committee working with me, and everything points to success" (fol. 1761).

Agent Murphy reports from Albany under date of May, 1902, that he has made a thorough can-

vass of the stores in Utica (fol. 1762), and persuaded one reluctant dealer to place no more orders with the Roelofs firm. "The Utica Central Trades Council was informed of his promise and vowed that they would persuade him to keep it" (fol. 1763). By suggesting proper threats in Albany, he persuaded another reluctant dealer to buy no hats without the label, and stated:

> "Before leaving the city I shall request the Central Body to appoint a committee whose duty it will be to frequently call on Mr. Walsh and see that he keeps his word" (fol. 1766).

Agent Byrne reports from Dayton, Ohio, concerning visits to 27 concerns in Columbus (fol. 1769). He "then began a tour of the labor unions and was fortunate enough to meet up with 42 locals, the building trade council and the central labor union. At each of these meetings I paid my respects to certain firms, the result being that they have all been put on the unfair list and their names are published every week in the Trades Record, the official organ of the central labor council of Columbus" (fol. 1772).

Referring to a recalcitrant firm in Cincinnati, he says:

> "The following unions have appointed committees to persuade him that it would be a good move on his part to take up some other line in place of the Roelofs. The central trades council (see minutes of council in papers mailed you), press machine hands, motormen, longshoremen, metal polishers, painters and decorators and the tile layers. Up to the present writing I have met 23 unions" (fol. 1774).

Agent Hennelly reports under date of May, 1902, from Minnesota, stating that he had been in Omaha and "visited 31 of the different unions and acquainted them with our troubles" (fol. 1776). He also visited the dealers (fol. 1778). In Lincoln, Neb., he found "two of the dealers handling the much looked-for goods. * * * The unions there promised to see those dealers and ascertain what could be done in the matter" (fol. 1778). When about to leave for Des Moines, he "received a letter from the secretary of the trades and labor assembly of Minneapolis stating that that body requested his presence at their next meeting, as they had been notified by two concerns that they had been operating with (for the reason of these concerns handling unfair hats), that they wanted to make a settlement to the effect of not handling any more unfair hats, or, in other words, they had enough of that kind of game" (fol. 1779). * * * They, like many others, were not satisfied that organized labor meant what it said until they tried it out and had it demonstrated to them to their own satisfaction that such was the case" (fol. 1780).

Agent Hennelly reported from Scranton, Pa., in June, 1902, stating that in Minneapolis he had received the "assurance of the organizations in the twin city that they would look after the few dealers there who continue to handle hats which were on the unfair list" (fol. 1782). He then went to Chicago (fol. 1782), and found a few dealers handling the unfair products. "The Chicago local had already sent a committee to those dealers and promises had been made to them which had not been lived up to" (fol. 1784). He then came east and states that "Upon reporting at

headquarters, after my visit home, I was instructed by President Moffitt to proceed to Allentown, Pa. After arriving at Allentown, I found one of the dealers there, who is also a jobber, handling the Philadelphia unfair product. In my visit to them I told them of my mission. I also told them I would be obliged to acquaint the labor organizations and public of their city and in other cities where they done business that they were handling this unfair product" (fols. 1787-88). He then went to Scranton and says: "At this writing I am not certain just how long I will remain in Scranton, but will be here until I am certain that no more of the unfair goods from Philadelphia will be handled here" (fol. 1793).

Agent Byrne, reporting under date of June concerning Toledo, states that a dealer by the name of Nirdlinger refused to comply with the request not to handle Roelofs' goods (fol. 1795), and that

> "At the meeting of the central labor union I was given the privilege of the floor, and the council appointed their business agent, Mr. A. E. Usher, to wait on Mr. Nirdlinger and to render all the assistance in his power to make our fight a success. About every second union I visited also appointed a committee to see the same gentleman in our behalf (fols. 1797-99). * * * Mr. Usher made his report at the next meeting of the C. L. U. It was decided 'that no member of organized labor will patronize this house.'"

Mr. Byrne then went on to Cleveland, where he visited many concerns (fols. 1799-1802). One concern refused to comply with his request, and Mr. Byrne reported:

> "The matter is now in the hands of the

United Trades and Labor Union (that being the name of the central body here since the C. L. U. and B. T. C. consolidated), and the individual locals whom I visit every night" (fol. 1803).

Defendant, Kelly, reporting from Louisiana, says that he "began a campaign against the Roelofs' hat when he arrived in New Orleans" (fol. 1805), and that "in company with committees representing different labor organizations, visited the stores that handled the Roelofs' goods" (fol. 1805). * * * He further adds: "I am using all kinds of committees to get these stores to countermand the orders they have placed in the factory. These storekeepers are fearful of having their stores placed upon the unfair list and will do most anything to prevent it. The firms of Fox and Lazard & Co. have agreed to discontinue. J. U. Adams, while fearful of a boycott, don't like to let go of the Yeoman agency, but he will come around O. K. Committees from street railroad men, longshoremen and colored council will call upon Adams to-morrow. Resolutions will be passed at the central council to-night and distributed throughout the city" (fols. 1807-8).

Mr. O'Hare, reporting from Knoxville, Tenn., says, concerning one dealer that "after using all the argument at our command we withdrew and placed the matter before the labor organizations of the city, who immediately sent committees to this store and informed the proprietor that unless the union label was in the "R" hat, the working people of the city would withdraw their patronage from him" (fol. 1811).

In the Journal for July, 1902, the editor reports:

"One Miller, a retail dealer of Newburgh, N. Y., has been placed on the 'We-Don't-Patronize-List,' by the central labor union of that city for refusing to discontinue handling the non-union products of Henry H. Roelofs & Co." (fol. 1818).

At the 1903 convention of the United Hatters, at which defendants John Cords, Peter McGlone, Peter Gallagher, P. H. Connolly, Simon Blake, Louis Orton and H. C. Shalvoy were present, the president, John Moffitt, reported on the boycott that was being conducted against Roelofs and the resolutions they had secured at the convention of the A. F. of L. agreeing "not to patronize any dealer or dealers who handles the products of non-union hatters, and more particularly the product of the firm of Henry H. Roelofs & Co. of Philadelphia." Mr. Moffitt further stated that these resolutions had been "followed up by the action of the convention in declaring a general boycott upon the products of Roelofs' factory. The effect of this action was almost immediately apparent" (fols. 132; 153).

He then tells of the desperate step that was taken by the Roelofs concern in suing the national officers of the United Hatters for $250,000 damages, in which action it was "admitted that the conduct of the fight by the Unions had been so effective as to injure his business to the extent of the amount of damage asked for or more" (fol. 155).

Mr. Moffitt then triumphantly read from the complaint in the Roelof action setting forth the various methods by which the concern had been damaged, and at the close of this complaint continues his report as follows:

"My principal reason for presenting so much of the text of this remarkable document to you is to show to what extent and how effective the means adopted by your officers and approved by your directors and Executive Board had proved in the conduct of our fight to compel the adoption of union conditions in the Roelofs' factory" (fol. 167).

After telling of the surrender of the Roelofs' factory, the report further continues:

FACTORIES UNIONIZED.

"Some conception of the labor that has been expended and the results obtained from *this* work in recent years may be gained from a list of hat factories brought under the jurisdiction of our organization since your president assumed office" (fols. 171-72).

Here follows the list of 60 factories mentioned and described in paragraph 17 of the complaint as having been compelled to yield to the demands of the conspirators. The report stated that there were 178 union factories and they "were opposed by only twelve non-union hat factories in the United States" (fol. 133). These statements made by the president of the union at the 1903 convention were ratified and approved by the convention, which thereupon re-elected the same John Moffitt to the presidency. No witness attempted to deny any of them.

The president reported the result of this interstate conspiracy in the Journal for September, 1902, in a semi-annual address:

"The unionizing of the hat factories of Henry H. Roelofs & Company at Philadelphia, Pa., and Roelofs, Pa., on the 19th of

July last, after a strike lasting fourteen months" (fol. 1832).

The United Hatters was now ready to undertake the deferred Loewe attack, which commenced by a strike six days later on the 25th of July, 1902.

The Attack on D. E. Loewe & Co.

Mr. Maher, the treasurer of the United Hatters, called on Mr. Loewe in November, 1900, to persuade him to unionize his factory (fols. 3906-12), and then reported back to the General Executive Board of the United Hatters (fol. 7496). Even at that time it was the intention to "exhaust all means" to unionize the factory (fols. 7546; 7337), and *do all the things which eventually were done* (fol. 7543). This is Mr. Maher's uncontradicted testimony, as treasurer of the United Hatters, and answers defendants' brief as to when the boycott was first contemplated (Defts.' Brief, fols. 39-40; 23-24). Even at this early date the conspirators contemplated an interstate boycott if necessary to unionize the Loewe factory. Loewe mailed Maher a letter (fols. 3918-24), about January, 1901, asking for further information, but received no reply (fol. 3926).

On March 6th, 1901, he received a telephone call from Maher to meet the officers of the United Hatters at the Groveland Hotel (fol. 3926). He went there and met President Moffitt, Treasurer Maher, Secretary Phillips, Vice-President Lawlor, who is a defendant, and Charles Barrett, late president of the Local Finishers' Union of the United Hatters (fols. 3927-30). They retired to a bed room (fol. 3930), and held an official meeting of the General Executive Board, which is reported in the

April Journal as held under date of March 6th at the Groveland Hotel with all members present. In the morning session the minutes read:

> "The question of taking some action in reference to a non-union hat manufacturer was considered. Action was deferred for the present" (fol. 1587).

The minutes for the afternoon session read:

> "The board took a recess at 1 P. M. In the afternoon the session was mainly taken up with the interview between the board and a certain non-union manufacturer in reference to the unionizing of the factory" (fol. 1587).

After a long interview at this afternoon session, which failed to persuade Mr. Loewe to unionize his factory, Mr. Moffitt said:

> "We have made up our minds that your factory is to be unionized and we hope to accomplish this in a peaceful way. However, if you don't if you think otherwise, we shall force it" (fol. 3942). "They hoped to accomplish it in a peaceful way; however, if I thought otherwise they would use their usual methods" (fol. 3944).

The language of this interview is undenied and undisputed, and it clearly implies that their "usual methods" were not *peaceful* and the previous fights show that they signified an interstate combination to destroy interstate trade. Defendant Martin Lawlor was present and though appearing as a witness did not contradict any of this evidence. This combination in restraint of interstate commerce, therefore, preceded any

strike or any boycott, and all subsequent acts were but steps to carry it out.

On March 20th Mr. Loewe met Lawlor and Maher and had a long interview as to the regulation of union factories (fols. 3954-74). On April 22nd, Mr. Loewe mailed a letter to Mr. Maher in which he declined to unionize his factory and ended in the words of defense which were embodied in the complaint (fols. 3977-94), but before mailing it he read it to the employees and none expressed disapproval (fols. 3978-80). This letter was received by Mr. Maher (fols. 7505-07).

By the time Mr. Maher received this letter in April, 1901, the Roelofs' strike had been inaugurated, and led to the postponement of further developments of the Loewe trouble until the Roelofs trouble should be terminated, except for the passage of the boycott resolution of the A. F. of L. in the convention of 1901, not to patronize dealers who buy non-union hats. Defendants' witnesses were totally unable to offer any other explanation of the postponement (fol. 7508). As a matter of fact, on Saturday the 19th of July, 1902, the National officers of the United Hatters held the last of a series of meetings in Philadelphia, which resulted in the unionization of the Roelofs' factories (fol. 1830), and Mr. Maher took up the Loewe matter by telephone in Danbury on the 24th of July, 1902 (fols. 3998-99). Mr. Loewe refused to confer further with the National officers on the ground that they had nothing to do with his business, and orders were given that same day to call the strike (fols. 6901-03). The men were directed to, and did, leave the factory on the morning of July 25th, 1902 (fols.

4000-07). The sequence of events is further shown by the order of business at the Danbury meeting of the Board of Directors held on August 6th, 1902, after the men had been ordered out. The minutes show the following continuous order of business:

> "President Moffitt then made a detailed statement of Roelofs' case, going over the whole business from beginning to end, and concluded by reading the agreement entered into between the firm of Henry H. Roelofs & Company and the United Hatters of North America. Voted, that the report of President Moffitt be accepted and endorsed. Voted, that the matter pertaining to the firm of D. E. Loewe & Company, be made a special order of business for the afternoon session" (fols. 1846-47).

Mr. Loewe gave his final written refusal to the union about April 22nd, 1901 (fol. 3983), and prior to that time in the same month the hatters were plunged into a serious conflict with the Roelofs concern which absorbed all their strength. The agreement settling the Roelofs' strike was signed 14 months later in Philadelphia, on July 19, 1902, and five days later the men in Mr. Loewe's factory at Danbury were ordered out.

This sequence of events shows a preconcerted plan to unionize hat factories and attack them one by one in the usual way by destroying their interstate commerce. The attack against Loewe was but one step in a plot to end all interstate traffic in non-union hats.

On the morning of July 25th the union men, following orders, went down to a hall on White Street to be addressed by Mr. Maher and Mr.

Barrett concerning the attack against Loewe (fols. 4003-6). Mr. Maher admitted that Hatters' Union meetings were usually held at night time so as not to interrupt the men at work (fol. 7515), but he could not explain why, in calling this meeting, he interrupted the business and the men at work during the busiest season and at the beginning of a business day (fols. 7517-20; 7037-38). He stated that his object in calling the strike "was to cripple the factory" (fol. 7535) and "prevent his (Loewe) getting out hats" (fol. 7536).

The union men left on Friday, July 25th, and the non-union men left on Saturday (fol. 4010). What was said by Mr. Maher to the men at these meetings was narrated to Mr. Loewe by several of his employees in explanation of their leaving his employ, and is in part as follows:

> "Mr. Maher stated that they were now through with the Roelof factory, and now they were ready to take up our (Loewe) case where they had left off the year previous and we will make quick work of it. We will do it in a few days, all we want now is for you to do what we want, that is, stop now and we will have them in a few days. Then somebody had interposed that I had always treated them well and it seemed rather rough on me to leave without finishing up the work. They finally agreed that those who had work in hand, that they should go back, and finish up, but should not stay any longer than 2 o'clock in the afternoon" (fols. 4043-44).
>
> "Loewe is not at all a big concern. We can make very easy work, we got Berg and we got Roelof, and both of them put up a persistent fight, but we finally got them, and now if you do not go out, of course, then we will have to treat you the same as we did

those in Berg's factory and in Roelofs' factory." I don't remember about Berg, but Roelofs' factory, I do. "That when we had Roelof where we wanted him, he presented us a list of employees who had stood by him, and he said, now, I want these men unionized with the rest of them, and he took up a piece of paper, and we took that list and took a lead pencil and crossed blue lines through those names, and we will treat you the same way unless you do what we want you to do. We have got them, because our agents are ready and we will send them on the road and they will ruin his business. If he should furnish his factory with non-union men to the roof, it won't do him any good, our agents are ready and we will ruin him."

Then he said, "Now, you stop work and we will get him next week," because they could make very quick work of it (fols. 4044-46).

Mr. Maher is not called to deny any of these statements and defendants even refused to read his examination when he was produced as defendants' witness on the former trial, and the same matters were discussed. All other testimony on this point, while containing no specific denial, substantially supports the allegation that the employees were coerced and threatened. Jo Haig testified that at the first meeting which Mr. Maher addressed, some one asked what would be done with the men who would not come out on strike, and Mr. Barrett replied while Mr. Maher nodded his approval, that *"if anyone stays in there or disobeys orders, there will be a fine of possibly five hundred dollars or maybe one thousand or his check taken away entirely"* (fol. 4031). This statement is uncontradicted and is confirmed by the fact that it is the practice of the union to levy

fines of this amount for disobedience (fols. 7193-97). At the second meeting, when the non-union men were present, Mr. Maher addressed them along the same line, telling how they had unionized Berg and Roelofs and telling the men that if they acted with the union, he would use his best endeavors to get them cards so that they could work in this factory which was to be unionized in a few days (fols. 7063-77). On the same day, an extract appeared in the Danbury News, which extract was first brought into this case by the defendants (fols. 2261-67) and confirmed such evidence, and is as follows:

"AFTER LOEWE FACTORY.

HATTERS' UNION WILL ATTEMPT TO UNIONIZE THIS PLANT.

> The United Hatters of North America, which has recently unionized several of the largest hat factories in the country, has transferred its operations to Danbury and announces its intention of unionizing the factory of D. E. Loewe & Co. President Moffit, Vice-President Lawlor and Treasurer Maher went to the factory and ordered all the union men employed to quit work. The men did immediately as instructed and the factory is now short-handed in all departments" (fol. 2264).

The effect of these orders and threats upon both union and non-union men is apparent. The men quit work because "Every man was afraid" (fol. 2951). "They stated to me, if we don't go out, we all lose—we never be able to work at hatting again" (fol. 2952). One of the foremen who refused to go out was villified and threat-

ened by Mr. Maher (fols. 3031-32). Mr. Donnelly, who was the spokesman for the National officers (fol. 7036) told the men that Loewe would be beaten in the same way that Berg and Roelofs had been beaten and only those who joined the union could keep their places (fol. 2974). As one employee said: "Well, what can I do? I must make a living" (fol. 4062). If any of the union men had disobeyed Maher's orders to quit work, they would have *ipso facto* lost their union membership (fol. 7199) and it would have been entirely within the discretion of the officers whether they could ever be admitted again (fol. 7199). The situation of these men was made the more difficult because nearly all the factories in Danbury were union and they were dependent upon the unions' favor to secure work (fol. 7075), and some of them testified that they had to belong to the union in order to earn a living (fols. 4982-6; 5517; 6097; 6780).

It would be idle to claim that this strike originated with the employees themselves or that the employees left of their own free will, but it would be immaterial whether the strike was induced by threats or persuasion if it was part of the plot to destroy plaintiffs' interstate trade by the *usual methods* as threatened by the Executive Committee of the Hatters in March, 1901. No explanation for the strike can be found except in coercion and intimidation. The evidence shows that the conditions in the factory were satisfactory, for there had been no complaint or strikes of any kind for a long time past (fols. 3996; 4020). The defendants were unable to name but one employee who had ever made a complaint or expressed dissatisfaction (fols. 7096-7101). The

union men sought Mr. Loewe's factory in preference to the union factories, for 80% of his sizers and 50% of his finishers were union men, according to the statement of the union officers (fols. 3939-40) when men were in demand in union factories (fol. 3940). Mr. Moffitt told Mr. Loewe on August 1st, 1902: "There won't be any changes to speak of to get your factory in union condition, because the conditions are all right" (fols. 4077-78). The men themselves expressed satisfaction with the conditions. No attempted justification was offered for the wrongs perpetrated against the plaintiffs, and the defendants were unable to name a single employee who requested to have the factory unionized (fols. 7510-13) and produced no employees to testify as to any dissatisfaction, although all of the employees became union long before the trial of this case, and were under the control of the defendants. The very fact that the attack emanated from the National officers exclusively (fols. 7194-95) within their authority (fol. 7193) and was postponed until the unionizing of Roelofs' factory is sufficient evidence that it was not the result of any dissatisfaction on the part of the men, but was part of a scheme to unionize one factory after another by restraining their interstate trade and commerce.

About 132 men struck in all (fol. 4064), which included all but eight finishers and one maker (fol. 4063), and the concerted withdrawal of so many men at one time after years of continuous service, without presenting any complaint or request to their employer, is in itself conclusive evidence of external coercive influence.

The defendants cite many cases supporting the

right of the men to strike, but the right of Mr. Loewe's men to quit work was not involved. The point at issue is the right of other parties unconnected with the plaintiffs to induce the plaintiffs' employees to quit work in order to further their iniquitous schemes. The motives of the plaintiffs' men in quitting work are also immaterial if they were wrongfully led by defendants to take such action.

On July 30th, Mr. Loewe met Mr. Maher again at the latter's request in a Danbury bank and had a lengthy interview (fols. 4065-70). On the first of August, Mr. Moffitt came to Mr. Loewe's factory (fol. 4071). After some argument in which Mr. Loewe explained his attachment to his employees (fol. 4079) and the obstacles in the way of unionizing his factory, Mr. Moffitt said:

> "Mr. Loewe, you know we have made up our mind, we never lost a case and we won't lose this case. You remember Roelofs was a large concern and Berg was a large concern. Why, we unionized them. You remember we spent $23,000 to get Roelofs" (fols. 4076-77).

So we have uncontradicted threats as to the extent and nature of the conspiracy just before the attack and immediately after, and their threats included an interstate boycott.

One of the conditions which the union officers demanded was that every employee in the factory should be a member of the union, while at the same time insisting that they would compel the plaintiffs to abandon some of the employees because they would not permit them to join the union (fols. 3973-76).

All Mr. Maher's and Mr. Moffitt's conduct in connection with this strike was reported to the Board of Directors a few days later and endorsed by them (fols. 1849-53). On August 7th it was voted "that the Board of Directors delegate their full power to the General Executive Board in their efforts to unionize the Loewe factory" (fol. 1853). The strike was destructive of the plaintiffs' interstate trade. There were over 4,000 dozen orders on hand (fol. 4087), which was 60% more orders than the concern had on hand at the same time in the previous year (fols. 4088-89). There were 150 dozen hats in each department in process of manufacture (fol. 3898) and over 6,000 dozen in the stock room (fol. 3898). 150 dozen hats were in the make shop in such condition that they would spoil if they did not receive immediate treatment (fol. 3014). They were unable to organize the factory with a full new crew until January (fols. 2980-85; 2953-61; 3015-21) and these were unskilled men who had to be taught the trade and for a long while damaged goods and did inferior work (fols. 2982-95; 2964-65; 3023-24; 3043-52) and compelled the abandonment of all attempts to manufacture the better grade of hats for the time being (fols. 2966-67; 3024). The damage due to the unskilled labor greatly increased the cost of production and the cost of materials (fol. 4306). They were so crippled that orders were cancelled by numerous customers, because of the delays and one customer alone cancelled an order for 600 dozen (fol. 4106).

The boycott immediately followed the strike. William J. Brady, who had been a shipping clerk in Loewe's factory, left several hours after the others (fol. 2831), and went into the employ

of the union. He was familiar with the methods by which the plaintiffs shipped their hats and the names and addresses of their customers (fols. 2829-30), and he now acted as a spy for the United Hatters, and by riding with the driver, or standing on the curb (fols. 2845-50), obtained information as to the name and address of each customer to whom shipments were made, which information was reported to the union. A man by the name of Wren was also employed in a similar capacity (fols. 2852-53) and both these men were paid by the National Union while the disbursement was charged to the Loewe fight (fols. 7550-51). This spying evidently proved successful, for delegates were able to tell the dealers they were visiting just when they had received or were to receive merchandise (fols. 2211; 2217; 2162-63; 2333-34). It was one of the usual methods employed in the Berg fight and necessarily in the Roelofs fight (fols. 7462-64, 103; 7466-67; 1432).

While Brady was employed immediately after the strike to furnish data for the boycott, Mr. Loewe's first knowledge of the boycott came from a customer about August 27th (fol. 4093), and under date of August 21st Agent Hennelly made his first report on the Loewe boycott (fols. 1854-56). The number of agents immediately sent out is given in a semi-annual report to the members in the Journal for February, 1903, where Mr. Moffitt says:

> "The strike inaugurated at the factory of D. E. Loewe & Co., of Danbury, in October last, is still in vogue and we look to a very early settlement, as our five agents on the road are working hard to this end" (fols. 1868-69).

In his report to the Convention of 1903 Mr. Moffitt covers the situation generally, and says:

> "The only other strike of importance since the last convention that is of more than passing importance has been one now being waged against the non-union firm of D. E. Loewe & Co., of Danbury. *This fight was inaugurated soon after the conclusion of the Roelofs fight, for reasons almost identical.* Loewe refused to treat with the organization, to even confer with your officers, and has been quoted as asserting that he would die before he would make terms with the union. It is unnecessary to say more about this fight at present than that it is progressing satisfactorily and that there is every prospect of its being concluded as successfully as have been the other fights of like nature we have prosecuted in recent years" (fol. 171).

In the 1907 convention, Mr. Moffitt reported:

> "The Loewe suit, which was the outcome of the fight made by the United Hatters to establish fair conditions in the Loewe factory, was instigated as a move to force this organization into disintegration. As a part of the fight against the non-union Loewe factory, we had, as in other fights, extensively advertised and urged dealers and consumers not to buy hats unless they contained the union label and had as extensively advertised the fact that the Loewe concern was not a union factory. In consequence of this advertising campaign, a widespread boycott was made upon the Loewe product, which was prosecuted by labor unions generally" (fols. 3820-21).

Evidence of the operations of the boycott in various localities must be taken up separately.

OPERATIONS AND EFFECT IN PHILADELPHIA.

The head of Eli Keen's Sons, a large customer of Loewe, testified that they had done business with him over ten years (fol. 1875), and were visited several times by people trying to unionize Loewe (fol. 1879). He received two letters from the Pennsylvania State Federation of Labor stating that an application had been made by the Hatters' Union to place his concern on the "We-Don't-Patronize-List" (fols. 1894-1906), and such action could be avoided if he refused to handle the "unfair" Loewe goods (fol. 1906). This evidence was confirmed when Agent Hennelly reported to the Journal that the hatters' delegates were at this convention and he was sure the hatters' interests "were ably looked after in the convention" (fol. 1902). Keen's business with Loewe fell off in 1902 and 1903 (fol. 1876) and he explained that the falling off was on account of the visits of these men against Loewe hats (fol. 1883).

The head of Wiernik, Edelstein & Co., testified that they had done business with Loewe for about eight years (fol. 1938). They were visited by people in regard to Loewe's trade (fols. 1938-40) and said:

> "I thought during the time these parties visited us it would be best not to buy any goods for a time, and I understood that they were to publish our names or something of that order in some of their local unions" (fol. 1942).

George B. Wells, another customer, testified that he was visited by Pat Lynch (fol. 1919) and a man named Birch (fol. 1920); that he was told

it would result in loss to his business if he kept on dealing with Loewe (fol. 1925). Lynch was secretary of the hatters' local and refused to answer many questions (fols. 1949-79).

A buyer for Loewe's customer—J. J. Seeds & Company, testified they dealt with Loewe off and on for over 15 years and continuously for about eight years (fol. 1928). He was visited by people representing themselves as agents of the hatters' union, asking them not to deal with Loewe (fols. 1929-33). After that his sales of Loewe goods fell off substantially (fol. 1932) because retailers would not buy them (fol. 1933) and the crippled conditions of the factory prevented it filling orders (fol. 1935).

Agent Hennelly reports to the Journal from Philadelphia under date of August 21st, 1902, as follows:

> "I arrived in this city on the 20th inst., and pursuant to your instructions, I immediately started to visit the houses who are handling the products of the unfair Danbury concern, and I am pleased to say that I met with fair success so far (fol. 1854). Owing to the nature of my work and just entering a new fight which requires a great deal of cautiousness and time, prevents me from writing a lengthy letter" (fol. 1854).

Under date of September 18th, Mr. Hennelly reports:

> "Since my last letter for the journal, I have found enough work in Philadelphia and adjacent cities and towns to keep me here until the present time, and judging from the amount of work yet to be accomplished, I could be kept busy in the same locality for

some time to come. I am pleased to say that I have met with good success so far (fols. 1857-58). * * *

"Now, I do not wish to convey the idea that I or the organization have tried or want to try to dictate to a jobber or to anyone else the kind of goods they shall sell or push. I know they will push the goods with the largest margin of profit. But I can't understand how any dealer can stand up and take the punishment when it is being dealt out in chunks of this size under the present circumstances" (fols. 1860-61).

Under date of October 26, 1902, local secretary Keegan, who refused to testify, reports: "Our friend William Hennelly is still working in Philadelphia and we can all see the effect of his work" (fol. 1864). On October 18, said Hennelly reports from Philadelphia: "We have been steadily gaining headway with our undertakings here and I would not be surprised if something dropped soon" (fol. 1866).

Under date of March 21st, 1903, Hennelly reports:

"Dear Sir: I am still in the Keystone State and am finding plenty to do, both in advertising and in trying to convince the retail and wholesale hat trade of this State, that they can very easily get along without non-union hats and especially without the goods from the unfair Danbury concern, where our men are on a strike. I have experienced some difficulty in a few cases with retail dealers along those lines, but they will profit from their experience. I feel that it is money well spent to convince a dealer that the labor organizations will not patronize a concern which is handling unfair goods or patronize any retail dealer who will patronize a wholesale house which persistently handles such goods" (fols. 1897-98).

In April and May, Hennelly is active throughout different cities of Pennsylvania (fols. 2018-20):

> "trying to discourage the sale of hats made by D. E. Loewe & Co., of Danbury, Conn. * * * He is visiting the retail dealers and acquainting them of the jobbing houses who are handling the product of this unfair concern" (fol. 2021).

In order to prove the operations in Philadelphia more overwhelmingly by the records of the local hatters' unions and their officers, the local officers were subpoenaed. They appeared before a commissioner with their books, and after hearing on the demand of their own attorney an outline of what plaintiffs' counsel desired to prove, each of them refused to answer many questions, on the ground that it would tend to incriminate them (fols. 1949-2016).

The result on Loewe's Philadelphia business is apparent (fols. 4177-84):

	1901.	1902.	1903.
Eli Keen's Sons	$30,885	$18,433	$4,332
Wiernik Edelstein	4,382	3,506	737
George B. Wells	7,116	4,585	5,019
J. J. Seeds & Co.	12,910	3,586	891
	$55,293	$30,110	$10,979

OPERATIONS AND EFFECT IN BALTIMORE.

In December, 1902, Agent Hennelly reports from Baltimore:

> "During the time I have been here I have visited about forty-five of the organizations and acquainted them of our present trouble

> and I have been assured by them that our interests here in this matter would not be neglected" (fol. 1867).

William Middlekauf, a large customer of Baltimore, testifies that he was visited by Hennelly and requested not to deal with Loewe (fol. 2905). He continued buying but his purchases were badly affected by Loewe's inability to fill orders on account of the strike (fols. 2909-11), and some orders were cancelled. His customers also stopped buying Loewe goods because they "had been approached and were afraid of being blacklisted in the local unions" (fol. 2909). As a result, his purchases from Loewe fell off from $18,000 in 1901, to 9,000 in 1902, and nothing in 1903 (fols. 4189-92).

Operations and Effect in Chicago.

Longley, Low & Alexander was a hat manufacturing and jobbing concern (fol. 2172), which dealt with Loewe regularly (fol. 2177). The factory was a union one, using the union label. They ceased buying of Loewe in the latter part of 1902 (fol. 2176), because they were visited by a delegation from the hatters that "wanted us to cancel an order we had given Mr. Loewe" (fol. 2179). The following interview took place:

> "We told them that the order had been placed in good faith and we felt that we would let Loewe & Co. fill the order. After considerable talk they finally threatened that unless we did cancel the order they would tie up our factory here, * * * but they finally decided that if we would agree to discontinue buying goods of Loewe & Company, why they would let our factory run undisturbed, which we agreed to" (fols. 2179-80).

Later Mr. Moffitt told a member of this concern that unless he would write Loewe to put the union label on his goods, the label would be removed from their Chicago factory (fols. 2187-89). The business before the concern ceased buying was $18,748 in 1901 (fols. 4197-4200).

Attack on Empire Hat Company.

The Empire Hat Company was in the same position as Longley, Low & Alexander, of Chicago, inasmuch as it had a factory wherein it manufactured stiff hats (fols. 3750-52), and obtained soft hats from the plaintiff to sell with its stiff hats (fol. 3754), for sale outside of the State of Connecticut (fol. 3770). He went to the Groveland Hotel in Danbury to see Mr. Moffitt, because they withdrew the union label from his stiff hat factory (fol. 3758), and Moffitt told him the label was withdrawn, because he bought hats from Loewe (fol. 3763). He accordingly secured a letter from Mr. Loewe, showing that he had quit using Loewe goods, and presented that letter to Maher (fols. 3768-69). His business with Loewe in 1901 had been over $11,000 (fol. 4186).

This device for breaking up Loewe's business with Longley, Low & Alexander and the Empire Hat Co. was one of the "*usual methods*" which had been used against Berg in the case of Volk Hat Co. and Austin, Drew & Co.

Operations and Effect in Boston.

Moore, Smith & Co., of Boston, was visited in reference to its dealings with Loewe (fols. 2209-10), and told that some goods had been placed on the express wagon for them the night before

(fols. 2211; 2217), and that it would be for the interest of the concern not to purchase Loewe hats (fol. 2218). The representative of this concern gave as his reasons for ceasing patronage:

> "I know the labor union people had reported—had been to some of the customers and stated that unless we stopped selling Loewe's goods, these same people would be boycotted in the town where they live. We couldn't afford to have anything of that kind happen and rather than do that I would sell some other goods" (fol. 2221).

The officers of the Boston local hat unions were subpoenaed and appeared with their union minute books, but refused to answer many questions, on the ground that it would incriminate them (fols. 2226-48; 2298-2308).

The concern of Delano & Wheeler, with customers scattered throughout New England, cancelled many orders (fol. 4677). The figures appear as follows (fols. 4193-96):

	1901.	1902.	1903.
Moore, Smith & Co. . .	$16,074	$8,305	$2,314
Delano & Wheeler	12,596	10,731	6,931
Lewis N. Fidler	1,692	665	366
	$30,362	$19,701	$9,611

Operations and Effect in Virginia.

Loewe's principal customer in Virginia was T. D. Stokes & Co., Jobbers, who sold throughout the southeast. They were visited several times by O'Hare and Lee, both representatives of the United Hatters, and they were accompanied by

representatives of the local Richmond unions (fols. 2028-29; 2057-77). Mr. O'Hare, reporting on this work in the journal for January, 1903, states that immediately on arriving at Richmond, he called on T. D. Stokes and, receiving little encouragement, "proceeded to call on the retailers" and "found there were 32 stores handling hats and 29 handling the goods he was looking for, and all buying from Stokes" (fol. 2026). He then continues:

> "After visiting all the stores in Richmond, I went to Petersburg, Manchester and Fulton and called on the retailers in those places and found the hat in every store. * * * In the meantime I visited all the unions in Richmond, Petersburg, Manchester and Fulton. Richmond has 30 white unions and 8 colored, and they all pledged us their support. When I visited the central labor union and told them of our grievance against this concern, at my request they appointed a committee to wait on T. D. Stokes, and they got no better satisfaction from him than I did. Also had a committee from the cigar makers call on him and no better results came from these interviews. Mr. Lee and myself together with these two committees, called on him again and got the same old story. Exhausting every possible means to get a favorable answer from Mr. Stokes, we then decided to draw up resolutions which you have a copy of, placing T. D. Stokes on the unfair list and have the central labor union adopt them, which they did without a murmur. After doing this we had typewritten copies of the resolution made, delivered one to each of the unions and all the retailers, whether they bought hats from him or not" (fols. 2028-29).

The accounts of this work are verified by a newspaper reporter who conferred with Mr. Lee

and Mr. O'Hare (fols. 2042-45). They told the labor council of Richmond that Loewe discriminated against union labor and employed foreign and child labor (fol. 2045) and the whole matter was published in the Richmond paper (fols. 2050-51). The colored union put the Loewe hats on the unfair list (fols. 2032-33). O'Hare visited all the labor unions in his efforts to destroy the Stokes business and secured a committee from the Central Labor Council to co-operate with him (fol. 2106). He then visited the various retailers who dealt with Stokes and secured a promise from them that they would not handle the hats (fols. 2107-8). The result of these operations was the complete destruction of the Stokes business in Richmond (fol. 2104). Stokes therefore discontinued business relations with Loewe for the reasons to which he testified:

> "Because of what my city salesman told me and because of what seemed to be the result of those interviews and that newspaper notice, our business in Richmond was practically stopped; then I heard from our driver that his wagon from time to time had been watched at the depots; and I also heard, but I cannot remember from whom, that as they had so effectually stopped our business in Richmond, they would probably go against our business in other Virginia cities, and subsequently in the South" (fol. 2087).

The customer notified the plaintiffs of the decision and the reasons therefor, which appear in a letter of January 20th, 1903, which was offered in evidence (fols. 2099-2103). It ceased purchasing from Loewe in January, 1903 (fol. 2055), ending an annual business of over $7,500 (fols. 4193-96).

Operations and Effect in the South.

In the meanwhile, Delegate James Byrnes was operating in Georgia and searching for Loewe hats (fols. 2109-19) and also in Alabama, but found nothing in the "L" lines (fols. 2120-27). Like all the other agents, they were engaged in ferreting out for destruction all of the plaintiff's trade.

Operations and Effect in Omaha, Neb.

The Gate City Hat Co., was visited by representatives of the hatters (fol. 2160). These delegates told this customer that he had a shipment coming from Loewe (fol. 2163) and "that there was not a shipment that went out of Danbury, Connecticut, that they did not know about" (fol. 2162). The concern handled other non-union hats but no objection was made to these (fol. 2165) and they only objected to buying the Loewe hats (fol. 2162) stating "that they were going to boycott non-union hats made by them" (fol. 2164). The concern therefore "thought it would be better to discontinue handling Loewe's hats than to antagonize the union because we had some union trade in the city and around about" (fol. 2169). The merchandise was satisfactory, and that is the only reason they stopped buying it (fol. 2170).

Operations and Effect in the Middle West.

As the plaintiffs' salesman Reed went on his belated trip throughout the Middle West, customers refused to place their usual orders on account of the existing labor troubles (fols. 3806-13). In fact "they most all stopped" buying (fol. 3814).

OPERATIONS AND EFFECT IN NEW YORK CITY.

The New York customers refused to buy as usual on account of the boycott (fols. 4119-33).

Wechsler, Laufer & Co. sold throughout New England, the Middle West and the South (fol. 4130) and their representatives told Loewe that he would not use as many goods because a good many customers demanded the label (fol. 4129).

Denzer, Goodhart & Scheuer, who dealt in many states (fol. 4124) told Loewe that they couldn't buy as many goods because his customers refused to handle the line and "preferred a line of goods to which the union didn't object with the label" (fol. 4122). There was also a conversation with J. G. Worthley, who stated "that his customers had been visited by agents of the labor union men" (fol. 4126) and for that reason his purchases had decreased.

Wm. P. Montague, the plaintiffs' largest customer, next to Triest & Co., testified that he employed salesmen to travel all over the United States (fol. 3057) and that he was visited by two people in the early fall of 1902 (fols. 3057-58). They insisted that he should discontinue his purchases and said:

> "They would see my customers, that is, the William P. Montague customers, and advise them not to use our goods, that they were made in a non-union factory and that they were made under very unhealthy and unsanitary conditions and the goods were not right, that they were scab hats" (fol. 3062).

These men came from Newark and one of them was Stelpflug, secretary of one of the Newark

local unions of the United Hatters (fol. 3059). They had several thousand dozen orders on hand with Loewe (fol. 3065) and lost a third of the business that season (fol. 3066). Their business was damaged by both the strike and the boycott (fols. 3082-83).

By reason of these operations in New York, the business there was diminished over $80,000 from what it had been in 1901.

Operations and Effect on the Pacific Coast.

Mr. Loewe had three important customers on the Pacific Coast, and these were Triest & Co., C. H. Meyer & Bros., and Louis Klein & Co.

The concern of C. H. Meyer & Bros. was visited by representatives of the Union in 1902, and told the representatives that they would not carry any more Loewe goods (fols. 2667-68), which promise they carried out (fols. 2668-69) in order to avoid being boycotted, as they had heard that "Triest & Co. were boycotted on the strength of their buying the product of D. E. Loewe & Co." and did not want to be in the same condition (fols. 2671-72).

The concern of Louis Klein & Co. was visited by the Union in reference to its trade with Loewe, and Klein gave as the reason for ceasing to purchase from Mr. Loewe that he feared the boycott (fols. 3274-82), because these two men told him "If I would continue buying goods from them (Loewe) they would put a boycott on me" (fol. 3281). He testified that his business with Loewe was increasing at the time of the boycott and would have amounted to $10,000 or $15,000, but for the boycott (fol. 3296). His business had been $6,222 in 1901 (fol. 4178).

These two customers having stopped dealing with Loewe, the boycott on the Pacific Coast thereafter settled itself upon Triest & Co., who were jobbers selling throughout California, Oregon, Washington, New Mexico, Arizona, Nevada and Utah (fol. 3314) and had dealt with Loewe over 15 years (fol. 2318). In the Journal, under date of August 21st, 1903, Mr. Hennelly reports from Portland, Oregon, concerning the Triest fight as follows:

> "I have been in this city for the past four days. The city is well organized and good results can be expected from Portland in the future. The State Federation of Labor of Oregon, and the Portland Federated Trades Council, have endorsed the action of the California State Federation of Labor and the San Francisco Council of Labor in declaring a certain San Francisco Hat Jobbing House unfair. Since my last letter for the Journal, I have operated in the following places: Los Angeles, Pasadena, San Bernardino, Redlands, Riverside, San Pedro, San Diego, Santa Anna, Santa Barbara, Bakersfield, and Fresno, California. At all of the above places the central bodies and the local unions endorsed the action of the San Francisco Council of Labor and the California State Federation of Labor without a single exception. I visited these meetings and addressed them on behalf of our label and told them of our present trouble and how they could help us in their localities. I also visited hat dealers in each place and billed each town with large and small cards. Brother D. P. Kelly is operating in the vicinity of San Francisco, Sacramento, Stockton, Oakland, San Jose, Santa Cruz, San Raphael, Eureka, and other places convenient to that locality. He no doubt is kept quite busy, as there is a lot of

work to be accomplished there in our line" (fols. 2310-12).

This report must refer primarily to Triest & Co., as C. H. Meyer & Bros. and Louis Klein & Co. had already ceased patronizing Loewe. Moreover, the connection is shown in other ways. The concern was first visited in January, 1903, by Rosenberg, secretary of the San Francisco Labor Council (fols. 2320-21), and affiliated with the American Federation of Labor and the California State Federation (fols. 2329-31), and once in January (fol. 2324) and twice in February, 1903, by Zant, the next secretary of the San Francisco Labor Council (fols. 2324-25) and again by defendant Kelly and Agent Hennelly in July, 1903 (fol. 2326). Zant in one visit exhibited a telegram addressed to Edward Rosenberg and signed by John A. Moffitt as follows: "See Triest regarding non-union goods of Loewe, which I spoke to you about at New Orleans" (fols. 2332-33), and another telegram as follows: "Triest & Co. placed orders with Loewe 198 dozen hats. Wire us how much money to send to start the boycott" (fol. 2333), and a third telegram—"Triest placed order for 160 dozen hats" (fol. 2334). Zant told Triest he "could buy from 99 non-union factories if there were 100 of them, but must not buy from D. E. Loewe & Co." (fol. 2344). Zant wrote Moffitt, the president of the Hatters, in February, 1903, in reply to his telegram, that Triest had been seen and would close out his business with Loewe (fol. 2523). On May 15, 1903, Zant wrote again, stating: "Some time ago we received a communication from you to enforce your boycott of the D. E. Loewe Hat Co. against one Triest" (fol. 2524).

On July 2nd, 1903, Triest received a call from Hennelly and Kelly (fol. 2345) asking him to quit buying of Loewe (fols. 2547-48). Immediately following the visits of Kelly and Hennelly, Triest read in the San Francisco Evening Bulletin for July 4th of the fact that their concern had been placed on the unfair list, and that Kelly had addressed the Labor Council, which had decided to declare a boycott on Triest & Co. (fols. 2355-57; 2546-48). The minutes of the meeting of the Labor Council of July 3rd show as follows:

> "The floor was given to D. P. Kelly, organizer and special representative of the Hatters' National, who made an appeal for the label, and urged the co-operation of the Council in boycotting Triest & Co., jobbers, for handling unfair hats from Loewe Hat Co.—Motion made and carried to declare boycott against Triest & Co., 116 Sansome St. Carried" (fols. 2533-34).

This council was composed of about 130 different unions (fol. 2439), and following its action, boycott circulars were issued in large numbers by the council in its own name, as affiliated with the American Federation and also bearing the names of Kelly and Hennelly. These circulars, after reciting the action taken by the Labor Council, stated:

> "Triest & Co. will be retained on the unfair list as long as they handle the products of this unfair hat manufacturing company. Union men do not usually patronize stores who buy from unfair jobbing houses or manufacturers. Under these circumstances all friends of organized labor and those deserving the patronage of organized workers will not buy goods from Triest & Co." (fols. 2362-65).

Late in July the council sent out other circulars calling attention by name *to a list of unfair concerns on the unfair list of the American Federation, including the name of the plaintiffs' firm* (fols. 3482-85). These are the circulars printed in full in paragraph 21 of the complaint. All of the concerns referred to in these circulars as on the unfair list of the American Federation had appeared officially on its unfair list in various numbers of the American Federationist, except the plaintiffs, and, although President Gompers testified that the plaintiffs were never put on the unfair list, his whole conduct proves that the whole Federation of Labor was behind this Federation's boycott. The fact remains, moreover, that all dealers *in any non-union hats* in every state were included in the Federation boycott by the formal resolutions of 1901 and that the agents of the Hatters traveling in the different states were official organizers of the Federation, whose duty it was to push boycotts, and these agents represented that the plaintiffs were on the unfair list of the Federation and officially put into operation against the plaintiffs' non-union hats the powerful interstate boycotting machinery of the Federation, which they were accustomed to use by instigating numerous state federations, city councils and local unions of the Federation in different states to co-operate with them. When the agents of the hatters visited the different branches of the Federation, they had the official authority of the Federation to command assistance. The past operations of this interstate boycotting combination made official action from Washington headquarters entirely superfluous. The wheels were too well greased.

The Labor Clarion, which was the official paper of the San Francisco Labor Council (fols. 2441-42), voted to publish its list of boycotts (fol. 2452), and the name of Triest & Co. was published on its boycott list (fols. 2448-57). The Retail Clerks' Union confirmed the boycott (fols. 2452-53). The secretary of the San Francisco Labor Council called on special customers of Triest & Co. in reference to the boycott, and reported back to the Council (fols. 2450; 2455-57). The customers of Triest were written threatening letters by the San Francisco Council in regard to the boycott (fols. 2472-77; 3214).

The minutes of the quarterly meeting of the Executive Board of the California State Federation of Labor, held on July 12th, 1903 (fol. 2427), show as follows:

> "William C. Hennelly and Daniel P. Kelly, national representatives of the United Hatters of North America, appeared before the board and requested endorsement of a boycott against Triest & Co., 116 Sansome Street, San Francisco, and also against D. E. Loewe Co. of Danbury, Conn. Request granted."

This federation is part of the American Federation of Labor paying dues to it, and is composed of individual labor unions and central councils. As a result of this action by the San Francisco Labor Council and the California State Federation of Labor, a wide-spread boycott was established. The Federated Trades Council of Alameda, composing over 30 different industries, issued circulars under date of August 4th, 1903, to Triest's customers directing them to appear before the Executive Committee of the Council to "show cause why they should not be put on the unfair list" (fols. 2648-52; 2661-62).

Michael Savannah narrates a conversation with Defendant Kelly as follows:

> *"I remarked at the time that they would have a very hard time in beating Triest & Co., but he said he did not think so; they had $100,000 to do it and did not care whether it took one or two or three years. They had already beaten the firm of Berg & Co., and H. H. Roelofs and they did not think they would have such a hard time beating us, or Triest & Co."* (fol. 2567).

The boycott extended to the State of Washington. Ellis H. Gross & Co. of Tacoma, Wash., was visited by Hennelly asking them not to patronize Triest & Co., and the concern received a copy of a circular of the Washington State Federation of Labor (fols. 3606-10), which recited that the action of the San Francisco Labor Council and the California State Federation of Labor was endorsed by the Washington State Federation of Labor, by the Western Central Labor Union of Seattle, and the Tacoma Trades Council (fols. 3627-29). The Tacoma Trades Council as well as the state federations, was affiliated with the American Federation of Labor (fol. 3595), and represents 25 or 30 unions (fol. 3594).

The Goldstein Hat Company was visited by Hennelly (fols. 3581-83), as was the concern of Henry S. Lillager of Seattle (fols. 3649-50). Lilliger was told that Triest & Co. were unfair (fol. 3652), and told that his concern would be boycotted and posted in every union in the city if he did not stop dealing with them (fols. 3659-60).

The unions in Oregon were also instigated to take up the attack upon Triest & Co. At a meet-

ing of the Portland Federated Trades Council on August 21st, 1903 (fol. 3744), the following business was noted:

> "William C. Hennelly, national representative of the United Hatters of North America, was admitted and made an address in which he * * * asked that the Council endorse the hatters' fight against the jobbing firm of Triest & Co., of San Francisco, and the manufacturing house of D. E. Loewe & Co., of Danbury, Connecticut. Motion that Council endorse the fight carried" (fols. 3745-46).

On the same date a circular was issued by the Portland Trades Council reciting the action of the California State Federation and San Francisco Council, and stating that the action "declaring Triest & Co. unfair was endorsed" (fols. 3728-32). Triest received about 25 of these Washington and Oregon circulars from his customers (fol. 2375).

The Astoria Central Labor Union also put Triest & Co. on the unfair list for handling Loewe's goods (fols. 3665-6).

Hennelly visited Astoria to prevent the sale of Loewe's hats (fols. 3668-76; 3721-25), and the account of his work was published in the Astoria daily paper (fols. 3681-84).

He threatened all of Triest's customers in Portland with a boycott if they purchased Triest's hats, and one of these customers testified:

> "He told me the laboring man, the union man, would not patronize me, and furthermore, he warned me that if I did, that they

would know of it * * * *that they knew all the shipments to different merchants from San Francisco.* * * * *They had men watching the shipments*" (fols. 3692-94).

Here again appear the *usual methods* employed against Berg, Roelofs and others.

The Triest boycott was carried to Los Angeles and vicinity. A customer from San Diego was visited (3524-32; 3408) and received a circular of the San Francisco Labor Council. Customers in Los Angeles were visited by Hennelly and received the same treatment (fols. 3538-43; 3547-49). In Los Angeles Hennelly said to one of Triest's customers: "He was out here investigating the merchants who are handling hats from Triest & Co., as Triest & Co. are an unfair house and handle non-union label goods, and they propose to make a list of such merchants and present their names to the local lodges for them to know who their friends are" (fol. 3549).

A reading of Martin Triest's testimony will show that state federations, city councils and local unions of Washington, Oregon and California—all of which are a part of the American Federation of Labor (fols. 806-7), flooded the Pacific Coast with boycotting circulars and that the boycotting agents reached every city of importance. One witness saw Kelly and Hennelly with a typewriter sending these circulars out by the hundred (fols. 2745-46).

The effect of this boycott against Triest throughout all the Pacific Coast States is shown by the testimony of Mr. Triest. His business with Loewe had been almost entirely in a better grade

of hats on which there was larger profit, and was increasing (fol. 2377). As a result of the boycott he lost all this business in the cities, although he tried harder than ever to sell them (fols. 2379; 3331-32; 3310-11), and he was able to secure increased trade in cheaper goods in the country (fols. 3308-9), which, however, though practically equal to the amount of business he had done in the better grades (fol. 3308), would not have interfered with the sale of the better grades (fol. 3323). The cheaper hats also yielded less profit to both manufacturer and jobber. He lost his entire trade in Loewe hats with some of his best customers, but the total amount of this loss was never presented to the jury, for the final figures in Mr. Loewe's business showed a smaller loss on account of the fact that Triest had secured an increased amount of new business in cheap hats. The amount of business lost in good grades was about $80,000 annually.

The salaries of these agents were not paid out of the general fund, which met the usual organization expenses, including advertising, but out of the defense fund (fols. 7437-61), which was created to fight manufacturers, thereby showing they were employed for militant purposes.

The effect of all these operations against Loewe in different parts of the country turned his $27,000 net profit of 1901 into a $17,000 net loss in 1902, a $15,000 net loss in 1903, and an $8,000 net loss in 1904 (fols. 4279-4294). The recorded expenses of the union down to October, 1903, in creating this loss were approximately $19,000 (fols. 7442-49).

Damages.

Without attempting to analyze the plaintiffs' damage or to show what portion of it may continue indefinitely as a more or less permanent destruction of their good will and trade, the evidence shows that the jury was more than justified in its estimate. When the strike took place the plaintiff had 40% more orders on hand than they had at the same time the previous year (fols. 4087-9). The plaintiffs' profit and loss sheet upon which the damage was computed, gave the defendants the benefit of a new line of business and new customers which the plaintiffs secured and which they would have been able to handle with increased profit if it had not been for the defendants' attack. While the defendants are not entitled to have their liability decreased by this new business, nevertheless, by relying upon this profit and loss sheet, the defendants get the benefit of this new business, since the losses shown by this profit and loss sheet are smaller than they otherwise would be because they include this new business. Thus, in San Francisco, Triest & Co. secured in the neighborhood of $80,000 new business in a new line of hats to make up for the loss of a different line of business because of the defendants' conspiracy. But ignoring the fact that this new business should have made the plaintiffs' profits greater in 1902 than in 1901 if they had not been interfered with, and ignoring the fact that it covers up part of the actual loss inflicted by the defendants, the plaintiffs' profit and loss sheet shows the following loss (fols. 4279-94):

	Profit.	Loss.
1901	$27,749	
1902		$17,591
1903		15,739
1904		8,113
		$41,443
Plus 3 years' profit at the rate of $27,749 a year		83,247
Total damage inflicted.....		$124,690

INDIVIDUAL LIABILITY.

After disposing of facts which establish the combination in restraint of trade under the terms of the Act of Congress of July 2nd, 1890, and the damages caused thereby, we proceed to the facts bearing upon the liability of the individual defendants.

It was not claimed at the trial that the great majority of the defendants personally performed all the acts alleged, but it was claimed that, directly or indirectly, they employed, paid the expenses and wages of and directed the agents and officers of the union to perform these various acts in their behalf and for their benefit. Paragraph 18 of their complaint, says:

> "To carry out said scheme and purpose, the defendants have appointed and employed and do steadily employ, certain special agents to act in their behalf with full and express authority from them and other members of said combination, and under explicit instructions from them, to use every means in their power to compel all such manufacturers of hats to so unionize their factories, and

each and all of the defendants in this suit did the several acts hereinafter stated, either by themselves or by their agents by them thereto fully authorized" (fols. 49-50).

Some twenty of the defendants are connected with the conspiracy beyond dispute, but the evidence showing the liability of 75% of them is substantially the same. They had all of them been members of one of the local unions of the United Hatters of North America since a long time prior to 1896 and, by virtue of such membership, became members of the United Hatters in 1896 at the time of the Amalgamation of the National Finishers and National Makers' Unions, and in the same year became members of the American Federation of Labor.

Examination of the Constitution, Laws and official reports and Proceedings of the Federation and United Hatters proves that they were both organized for the purpose of doing the acts complained of.

They had all contributed to the funds employed in financing the boycotting operations of both associations with such knowledge and means of knowledge as compelled the belief that they fully understood and approved of such acts. They had all acquiesced in the employment and retention of those members of the association to which was committed the work of carrying on the purposes of the association for their benefit under the form of government they had adopted under the constitution which compelled the belief that they understood the means employed and the acts done by them.

LIABILITY FOR ACTS OF THE FEDERATION.

The constitution of the Federation provides for boycotting, and its principal activity has been the prosecution of interstate boycotts. This has been formally admitted in open court (fols. 744-46). Who is bound by this constitution and responsible for these boycotts? Who is bound by the provisions to assist each other in "the sale of union label goods" (fol. 603)? Obviously, the million and a half members who compose and support this organization. They are presumed to have knowledge of them.

> *Raggett* vs. *Musgrave*, 2 Car & P., 556;
> 12 Common Law Rep., 730.

The Federation has no existence or support except from the membership and dues of these defendants and others similarly situated. It is their agency. Its constitution and the proceedings of its conventions, where its boycotts are declared, are its supreme law (fol. 640), and are binding on none unless these defendants. The official magazine speaks for no one unless it speaks for these defendants. They occupy the same relation to the Federation, its constitution, conventions, officers and activities as they do to the United Hatters, its constitution, conventions, officers and activities. The parallel is exact. Allegiance to the Federation is made doubly sure by the constitution of the United Hatters, which provides for election of delegates to the Federation by referendum vote (fols. 7119; 504; 573), and directs all local unions to affiliate with central labor unions of the Federation (fols. 478; 633-36). The defendants and other hatters have therefore

affiliated with the Danbury Central Labor Union (fol. 343) and the Norwalk Central Labor Union (fols. 206-9) and have been duly represented at each convention of the Federation, both through delegates of the United Hatters and the Connecticut State Federation (fols. 229; 343; 369), and these delegates have voted for numerous boycotts of the Federation (fols. 652-57). The Hatters' organization has aided in the prosecution of Federation boycotts and allowed its special agents to act officially for the Federation in this work, while the Federation in return has been assisting the Hatters in their efforts to drive non-union hats out of interstate commerce. This condition has existed continuously for many years, accompanied with great publicity. Although the officers of the Federation testified as witnesses for the defense, none of them testified that anything had ever been done by the Federation or its officers which was beyond the scope of their authority, and there is no claim that the defendants or other members of the Federation have been betrayed or deceived by anything which has been done by the agency they have created, or that there has been any concealment or lack of publicity as to the acts and doings of these agents.

Liability for Acts of the United Hatters.

As members of the United Hatters, the individual defendants are the creators and supporters of another agency called the United Hatters to which they bear the same relation as to the Federation. Its constitution instructs the directors thereof that "they shall use all means in their power to bring such (non-union shops) in the trade" (fols. 433;

572-3). Its by-laws relating to assessments levied on each member further provide:

> "One-half of the above-mentioned one percent. shall be placed in a separate fund to be known as a Reserve Fund, and shall not be used for any purpose other than strikes, lockouts or placing of men on the road to agitate for the label of the association" (fol. 448).

Other provisions give the power to unionize and fine (fol. 436). They are forbidden to sell non-union hats (fol. 494). Strikes and the booming of union label hats by traveling delegates, and the duty of attempting by these methods and all means in their power to unionize all non-union shops, were among the express provisions of the Hatters' constitution. The usual trade union practices of unionizing factories by concerted action in declaring strikes and withdrawing patronage are thus adopted and these are the very practices of which we complain. No limit is placed upon the occasion or manner of utilizing these means to unionize factories, inasmuch as the constitution expressly says to the directors that "they shall use all means in their power."

If there were any ambiguity as to the objects of the Federation and the United Hatters and the authority of their respective officers, that ambiguity is dispelled by the practices of the union, ratified by the delegates of each convention and assented to by all who read the journals, reports and convention proceedings. From their beginning, the Federation and the Hatters' organization have been pledged and largely devoted to boycotts and have been co-operating in connection

therewith. Such boycotts have been duly reported to the conventions of the Federation and United Hatters, where they were duly ratified and approved by the defendants there present and other delegates elected by the general membership. The action at these conventions constitutes the fundamental law of the organizations and may change the constitution itself (fols. 409; 500). The proceedings of the Hatters' conventions are printed, published and circulated in the rooms of the various factories where the defendants work so that they might be advised of what was being done in their behalf (fols. 13-20; 233-37; 301-4; 6893-99; 7152-59). Even after the adjournment of the convention, the membership had the right, by a two-thirds vote, to veto and annul its action (fols. 7011; 409). And thereby stop wrongdoing.

All of these boycotting operations were further published in the official monthly journal of the United Hatters, which was placed each month in the rooms of the factories where the members were working (fols. 13-20; 233-37; 301-4; 6893-99; 7152-59), so that they might be fully advised as to what was going on. The "Danbury News" published them for the benefit of those defendants who worked in Danbury and Bethel and many of them at least read this paper (fols. 4418-4515). This paper had a circulation of 6,500 in Danbury's population of about 20,000 (fols. 2255-59), and 2,700 of this population belonged to this union (fol. 337; 7153). Twenty-five miles away the Norwalk papers, publishing the same matter, were read by Norwalk defendants (fols. 4527-63). Full reports were made by travelling delegates to the meetings of the local unions (fols.

281-88; 333-34; 349-51; 357-58; 394-6), which the members were obliged to attend under penalty of fine (fol. 528). Conspicuous incidents of vast importance to the membership brought these matters to their attention. The organization was sued for $250,000 on account of the Roeloffs trouble, and this was heralded in the headlines of all newspapers (fols. 4493-4503). At the time of the Berg trouble, a special assessment of 2% was levied upon the membership to support the boycotting agents on the road (fols. 1531; 193), and delegates explained at local meetings the purposes for which this money was being spent (fols. 281-88; 349-51; 358). Defendants worked in union factories with numerous other members of the same organization having the same interests, where, in the ordinary course of human affairs, it would seem inevitable that these matters would be discussed. A year before the suit was commenced, warnings were sent through the mail to all the union hatters in Danbury, together with an injunction against boycotting, telling them that they were responsible if the evil work continued (fols. 2872-89). This was signed by D. E. Loewe & Co. and issued immediately after all the defendants knew that a strike had been called to unionize that concern, so that its meaning was clear. This same warning was published in the Danbury News as an advertisement, in large type, for a period of one week (fols. 4104-6). The evidence shows, therefore, that at the time the suit was brought, the United Hatters had given wide publicity to their uninterrupted boycotting operations for a period of seven years, and of the members' money had spent as much as $23,000 in one fight, $18,000 in another, and $19,000. in another.

In the face of this wide publicity, many of the defendants swore they never knew or heard that their organization had been engaged in boycotting. After some fifty of them had been examined with considerable monotony, a stipulation was made that the balance of them, if called, would testify to practically the same effect (fols. 6781-89), but the plaintiffs, being unwilling to believe such extraordinary ignorance as was testified to by so large a group of men "reserve the right to attack the credibility of such testimony in argument or otherwise" (fol. 6789). In this town of 20,000 with 2,700 members of this union, bombarded by boycott literature and publicity, it minght have been possible to discover one member of the Hatters' Union who was not familiar with its most prominent activities, but it was literally impossible for 150 intelligent workmen chosen at random, to have each shared such extraordinary and unusual ignorance. If the jury had believed that these men were testifying truthfully and were innocent victims of the wicked men whom they had mistakenly placed in office, the verdict would never have been what it was. If there had been any evidence from which it could have been claimed that these defendants had been deceived and betrayed by their officers, they would surely have commanded the sympathy of the jury.

The cross-examination of the defendants further demonstrates their equivocal position and equivocal testimony. After this suit was brought and they were thereby emphatically informed of the enormity of the charges that were made against their organization and its officers, not one of these defendants raised a hand to stop those

practices or to make any investigation or protest. No effort was made to revoke or veto the various boycotts which had been conducted by the United Hatters which it was in the power of the members to do by virtue of the constitution itself. Each defendant continued a member, paying dues as theretofore, and when the 1907 convention came around, the same officers who were most conspicuous in the attack upon the plaintiffs were unanimously re-elected after a further report concerning boycotting of the plaintiffs which was unanimously adopted (fols. 3817-47). New provisions were placed in the constitution authorizing employment of agents on the road and amplifying their powers and further providing that these agents "perform such other duties as may be transmitted to them by the board" (fols. 3829-30). If these defendants were innocent, then they had been deceived and betrayed by their officers and agents, against whom there would have been a united and spontaneous outburst of indignation. On the contrary, they continued these same officers in full control with large discretionary powers and the boycott of the plaintiffs was again approved. The very testimony of some of the defendants on cross-examination was an express approval of what their officers had done. They were satisfied with what had been done (fol. 5405); didn't see any need of reform (fol. 5126); were satisfied with the record of the union (fol. 5597); were satisfied with the officers (fol. 5659); were satisfied with what the officers were doing (fol. 6341); didn't want to find out what their organization was doing (fol. 6371); were satisfied with what the officers had done (fols. 6759). One admitted the officers had this authority and their acts

were binding on him (fol. 6557. They admitted that their officers had done all that could be done to bring these maters to the attention of the members (fol. 6758), and were perfectly willing to leave it in their hands and stand by what they did (fol. 6849). Instead of attacking or opposing the officers who had been most responsible for this wrongdoing, they surrendered to them the complete control of this case and the right to dispose of it in any way they saw fit. From these officers, as representing the organization, they received an agreement under which they were to be held harmless from all liability whatsoever on account of counsel fees, judgment, etc. (fols. 5511-15; 5624-30). Each defendant was paid his day's wages and expenses to testify in his own behalf (fols. 6785; 5796), and has already received the face amount of the savings bank account attached (fols. 3822-23). If the uniform and extraordinary ignorance of 150 defendants is past belief, it becomes the more so when coupled with evidence showing complete harmony and co-operation with the agents and servants whose wrongdoing for their benefit and interest they repudiate but permit to continue. Their conduct in making no protest, taking no action to rescind the proceedings of the convention, permitting the re-election of the same officers and the conduct of the same boycotting, is only consistent with the theory that these officers have in time past been acting with their express authority and approval. Directors and officers of the union, like defendant Lawlor, although on the witness stand, did not venture to testify that any of the acts done to injure the plaintiffs were beyond the scope or authority of the union or its officers. Nor did any defendant testify in this respect.

The authority of the officers did not vary with the different defendants according to their private conceptions or intentions, the amount of their individual information or their personal ethics. This work of this organization had been trumpeted for over five years through an official journal published monthly by the defendants themselves for their own information, in numbers from 4,000 to 6,000, and in printed reports of convention proceedings, and had received the assent and express ratification of all delegates to conventions held every four years. It has, therefore, received the sanction of the great mass of the members and become the established work of the association and the measure of the officers' authority. The scope of the officers' authority and interpretation of the objects and purposes of the combination is not controlled by denials of knowledge on the part of one hundred members who said they stayed at home and were therefore not familiar with its affairs, objects and purposes. The practical interpretation of the constitution and the organization's purposes, as established by uniform usages, exercised by constitutionally elected officials for constitutional purposes, and approved and assented to by all readers of the Journals, all delegates to the conventions, and all who attend any meetings, was as binding as the literal language of the constitution itself.

POINT I.

The Court properly and adequately charged the jury as to the nature of the combination and conspiracy alleged in the complaint, and as to the issues raised by the pleadings, and as to what constituted an unlawful restraint of interstate trade under the Sherman Anti-Trust Act in the case before it, and it committed no error therein prejudicial to the defendants.

Our head-note covers assignments of error 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 14, 15, 16 and 20, and pages 11 to 116 of the defendants' brief.

After reading over several times those pages of the brief, we have concluded that the meaning of the author is, first that *under the allegations of the complaint*, the plaintiffs could not recover for damages to their business and property, which was the result of the restraint and destruction of their interstate trade by means of a boycott of their hats, unless *the dealers* in such hats were *coerced* into not buying them, and that the judge ought to have told the jury so; and second, that the acts done in carrying out the conspiracy under the Sherman Anti-trust Act, alleged in the complaint, were not unlawful or actionable, if the same would have been innocent or lawful but for that act.

But the trouble about all that is, that certain particular allegations of the complaint do per-

mit just that recovery and were specifically inserted by its draftsman for that very purpose.

It was alleged in the complaint (fols. 54 and 55) that

> "The defendants, with intent to injure the property and business of the plaintiffs by means of acts which were forbidden and declared to be unlawful by said act of Congress, entered into a combination or conspiracy *to* restrain the plaintiffs and their customers in States other than Connecticut in carrying on said trade and commerce, *and* to wholly prevent them from engaging in and carrying on said trade and commerce between them, *and to prevent the plaintiffs from selling their hats to wholesale dealers and purchasers in said States other than Connecticut,* and to *prevent the plaintiffs from obtaining orders for their hats from such customers and filling the same and shipping said hats to said customers* in said States as aforesaid, and thereby to injure the plaintiffs in their property and business, *and* to *render unsalable the product and output* of their said factory, so the subject of interstate commerce, *in whosoever's hands the same might be or come,* and to employ, as *means to carry out* said combination and conspiracy, and *the purposes thereof and accomplish the same, the following measures and acts, to wit,*
>
> 1. To cause, by means of threats and coercion and without warning and information to the plaintiffs, the concerted and simultaneous withdrawal of all the makers and finishers of hats working for them, who were not members of their said combination, the United Hatters of North America, as well as those who were such members, and thereby cripple the operation of the plaintiffs' factory and prevent the plaintiffs from filling a large number of orders then on hand from

such wholesale dealers in States other than Connecticut, which they had engaged to fill and were then in the act of filling, as was well known to the defendants;

2. *In connection therewith* to *declare a boycott against all hats made for sale and sold and delivered or to be so sold and delivered by the plaintiffs* to said wholesale dealers in States other than Connecticut, and to actively *boycott the same* and the business of those who should deal in them, and *thereby prevent the sale of the same* by those in whose hands they might be or come through said interstate trade in said several states;

3. To procure and cause others of said combinations united with them in said American Federation of Labor in like manner *to declare a boycott against and to actively boycott the same*, and the business of such wholesale dealers;

4. *To intimidate* such wholesale dealers from etc.;

5. *To threaten* with a boycott and to actively boycott such customers, etc.;

6. To falsely represent etc.;

7. *To use the said union label* of said United Hatters of North America *as an instrument to aid them in carrying out said conspiracy* against the plaintiffs' and their customers' interstate trade and *in connection with the boycotting above described*, for the purpose of *describing and identifying the hats of the plaintiffs and singling them out to be so boycotted.*

8. To employ a large number of agents to visit said wholesale dealers, etc.

9. *To use the daily press* in the localities where such wholesalers reside and do business *to announce and advertise the said boycotts against the hats of the plaintiffs* and said wholesale dealers, and thereby make the same more effective and oppressive.

10. *To use the columns of their said paper,* the journal of the United Hatters of North America, *for that purpose and to describe the acts of their said agents in prosecuting the same.*"

Having thus described in the complaint the nature and purposes of the combination which the defendants had entered into, and *under a videlicit* the several means and acts to be employed by them to carry it out, the draftsman next proceeded (in fols. 63-80) to allege specifically and in detail that, in pursuance of said combination and conspiracy, the defendants did each one of the things above enumerated, and among them mentioned the following (fols. 66 and 67):

"*And in connection* therewith, *declared a boycott against all hats* made for and so sold and delivered and to be so sold and delivered to said wholesalers in States other than Connecticut, and *actively boycotted the same* and the business of those who dealt in them in such other States, *and thereby* prevented the purchase of *the same* from the plaintiffs *and the sale of the same* by those in whose hands they were or might be in the course of such interstate trade and caused *and procured* others of said combinations united with them in the said American Federation of Labor *to declare a boycott* against the plaintiffs, *their product* and against the business of such wholesale dealers in States other than Connecticut as should buy or sell them, and of those who should buy from such wholesale dealers any goods whatever."

And (in fol. 70)

"*Used the said union label* of the United Hatters of North America *as an instrument*

> to aid them in carrying out said combination and conspiracy against the plaintiffs' and their customers' interstate trade as aforesaid, and *in connection with such boycotting*, by using *the same and its absence from the hats of the plaintiffs* as an insignia and device to indicate to the purchaser that the hats of the plaintiffs were to be boycotted."

The draftsman then proceeded, in paragraph 22 (fol. 81) to state that

> "By means *of each* and *all* of said *acts* done by the defendants in pursuance of said combination and conspiracy, they have greatly restrained, diminished, and in many places destroyed, the plaintiffs' trade and commerce with said wholesale dealers, in said States other than Connecticut, by the loss of many orders and customers directly resulting therefrom, and the plaintiffs have been injured in their business and property by reason of said combination and conspiracy, and the acts of the defendants done in pursuance thereof and to carry the same into effect."

In view of the foregoing analysis of the complaint, the incorrectness of the defendants' requests numbered 2, 3, 4, 7, 8, 11, 14 and 15, is apparent. The defendants sought, by these requests, for instructions to have the court withdraw from the jury consideration of every allegation of the complaint and the proof offered thereunder, except those relating to the defendants' combination for the purpose of intimidating the customers of the plaintiffs. The point of every one of them was, that *the customers* of the plaintiffs must have deserted the plaintiffs *involuntarily*, by reason of the *intimidation* by the defendants, in order to be entitled to a verdict in the

case. Such instructions, had they been given by the Court, would have been erroneous.

But the assignments of error from one to twenty discussed under this Point I also raise the question of the sufficiency and correctness of the charge.

When the judge finished reading his charge to the jury on October 13, 1912, and was about to commit the case to the jury, it had already been in court nine years. The defense during all that time had been conducted by the same distinguished counsel, Hon. John K. Beach, now a member of the Supreme Court of Errors of Connecticut. It had been tried twice before juries under this complaint, one trial occupying eleven weeks and the other seven. It had been before the Circuit Court, the Court of Appeals, and this Court, on a demurrer to the complaint, and had been thoroughly discussed in all of them. After the first trial before the jury it had been taken by the defendants to the Court of Appeals and thoroughly argued there. At the close of the second trial the facts and points involved were still fresh in the minds of the judge, jury and counsel. The counsel for the defendants had presented to the court a carefully prepared series of typewritten requests for instructions, in which, by the way, there was no intimation that any of the evidence which had been admitted in the case for the purpose of showing knowledge on the part of the defendants was not admissible for that purpose, as is now claimed in their brief, and no request for any instruction to limit the application of the whole or any part of such evidence to any particular defendant or defendants, and also no re-

quest for a direction to the jury to return a verdict for the defendants, upon the evidence, which request and motion would surely have been made had the defendants' counsel then believed that the evidence was not legally sufficient to support a verdict for the plaintiffs.

These typewritten requests were then in the hands of the judge and copies of the same were in the hands of defendants' counsel. The judge had charged the jury in his own language, as fully as he thought necessary to place the issues clearly before them, and had dwelt especially upon the law and the language of the complaint in their bearing upon what were the really contested issues of the case as he understood them. He had put his charge in typewriting, the counsel for the defendants had heard it read, had listened to it attentively, it was not very long, it was still in his hands right before them and accessible to them to point out any short-comings in its instructions, if they desired to do so, that they might be corrected by him before the jury left the bar. If he had committed any error therein, prejudicial to the defendants, if it was not corrected then and there, it could be corrected thereafter only by the Court of Appeals or by this Court after long delay, and a new trial which must follow must be had after still further delay, and at great expense to both sides, and to the United States. Under these circumstances it was clearly the duty of the defendants, under repeated decisions of this Court, to then and there point out to the Court any deficiency or ambiguity in the instructions, prejudicial to them, that the same might be corrected before the jury retired.

What they actually did at the time is reported in full in the record, at pages 422, 423, and 424 as follows:

First as to the requests:

"Mr. Beach: There are *three* points, *I am not sure that I can find them.* Of course, we *except seriatim* to the refusal to charge as requested in our requests to charge. *It may be that some of them have been covered.*

The Court: *Most all of them* I guess.

Mr. Beach: Well, *if they are it won't amount to anything.*

The Court: No.

Mr. Beach: And if they are not, that will protect us so far as that is concerned."

Next as to the charge:

"Mr. Beach: Then as to your Honor's charge, we want to except *to that portion of it* which instructs the jury that the defendants are liable here because they were *in duty bound to know what their agents were doing.*

The Court: No, *in case they find certain facts.*

Mr. Beach: Oh, change that Mr. Stenographer to that portion of the charge of the court, which instructs the jury that if they find any defendant was *in duty bound to know* what the agents and officers of the United Hatters of North America were doing *or ought to have known* of such conduct.

The Court: And that the officers and agents had reason to believe, etc.

Mr. Beach: Believed they did know?

The Court: Yes. I know what you mean. What do you say to that exception. Do you want to stand on the charge as given?

Mr. Merritt: Yes, we do, your Honor.

Mr. Beach: You haven't got my point. I haven't finished; irrespective of the actual

knowledge or intent of said defendants. Then there are two more propositions here.

Mr. Beach: To so much of the charge of the judge as directs the jury that it was a part of the original *scheme to interfere with the plaintiffs' interstate trade.*

The Court: Do you want an exception as to that?

Mr. Beach: Yes.

The Court: Because I took a contrary view to you squarely as to your request on that subject? You will have no trouble as to getting an exception as to that.

Mr. Beach: Is that noted sufficiently so that we can do that hereafter?

The Court: Yes.

Mr. Beach: (to Mr. Merritt) You have no objection to what we have stated in an abbreviated form as to *the points* that we *wanted to take any exception to.* The Judge is satisfied to leave it to that.

Mr. Merritt: You can correct it later on.

Mr. Beach: One more please, and to so much of the charge of the Court to the jury as directs the jury that in estimating damages they are at liberty to award *continuing damages which are the result of acts done prior to the commencement of the suit.*

The Court: I think that should be limited to 1904.

Mr. Merritt: You can say that the plaintiffs make no claim beyond 1904.

The Court: I will say that, but you want an exception just the same?

Mr. Beach: Yes.

Mr. Mulholland: If these defendants so conducted themselves that the agents had reason to believe that their acts were authorized.

Mr. Merritt: He has covered that."

Now it is to be particularly noticed that while the charge, as made, covers ten pages of the rec-

ord, or 40 folios, the three parts of it thus excepted to are contained in only five folios (fols. 1670, 1671, 1674, 1675, and 1676), found in the seventh and eighth pages of the charge, and related only to the matter of the circumstances under which some of the individual defendants might be held liable, and to the matter of the recovery of damages accruing after the suit was begun from acts done before it. The first six and a quarter pages of the charge as made, in which the judge endeavored to the best of his ability to state to the jury the nature of the action, the scope and meaning of the complaint and the law bearing on the subject, and submitted the issues of fact to the jury, passed at the time, without criticism or exception by the defendants, on the ground that they were deficient either in fulness, appositeness or clearness to meet the requirements of the case. Nor was there the slightest claim or suggestion to that effect in their brief in the Court of Appeals when the case was pending there. It has been reserved until their brief was filed here to attack the judge's charge in those respects.

Nowhere in their 71 assignments of error or in their brief here, do the defendants find any fault with the charge of the trial court on the matter of the damages which the plaintiffs might be allowed by the jury to recover, if they came to the question of damages, except on the single point as to the damages accruing *subsequent to the bringing of the suit* down to 1904, which were the direct and proximate result of acts done prior to the suit. Which point we deal with separately hereafter. And in their 13th request to charge, the defendants expressly conceded the right of

the jury to allow for the damages which resulted to the plaintiffs from the comparative inefficiency of the factory organization after the strike down to the latter part of October, 1902, to which period the Court limited the plaintiffs' right to recover for such damages.

Turning now to the charge as made, we find that the judge first quoted to the jury, verbatim, the statute under which the suit was brought, whose terms are so clear that further explication of them only serves to darken its meaning, and quoted what this Court had said of the complaint when last before it that:

> "In our opinion the combination described in the declaration is a combination in restraint of trade or commerce among the several States, in the sense in which those words are used in the Act; and the action can be maintained accordingly."

The judge then added "That decision carries out a principle of law that every person individually, and the public has collectively, a right to require that the course of trade shall be kept free from unreasonable obstruction," which is the precise point of so many decisions of this Court.

The judge then took up the complaint and explained it to the jury as follows:

> "The essential averments in this complaint are, briefly stated; that there was an existing interstate traffic between the plaintiffs and citizens of other States; that for the direct purpose of destroying such interstate traffic the defendants combined, not merely to prevent the plaintiffs from manufacturing articles then and there intended for transpor-

tation beyond the state, but also to prevent the vendees in other states from reselling hats which they had imported from Connecticut, and from further negotiations with the plaintiffs, for the purchase and intertransportation of such hats from Connecticut to the various places of destination; so that although some of the means, whereby the interstate traffic was to be destroyed were acts within a state, and some of them obviously not within the scope of the Federal authority, being intrastate matters (in the state matters), yet the purpose of the combination *as alleged* is to prevent or at least abridge interstate trade and transportation; that the plaintiffs said interstate traffic was that of hats manufactured at their plant at Danbury, Connecticut, and the business carried on there was largely dependent upon interstate trade, whereby the product of their factory was consumed; that the defendants entered into a conspiracy to violate the United States statute which I have already quoted, and for the purpose of destroying that trade; and that at the time of the forming of this combination the plaintiffs were in the process of making a large number of hats for the purpose of filling orders to customers in different states; that the defendants were members of a vast combination, called the United Hatters of North America, comprising upwards of nine thousand members, including a large number of subordinate unions, and that they were also combined with nearly a million and a half of the members of another association known as the American Federation of Labor; that there was a scheme, called in the law a conspiracy, to force manufacturers of hats in the United States, *including the plaintiffs*, against their previous policy of carrying on their business, to organize their workmen, in the departments of making and finishing hats, into an organization to be part

> and parcel of the said combination, known as the United Hatters of North America; and this was to be accomplished by the members of this combination restraining and affecting, if not destroying *the interstate trade and commerce of the plaintiffs.*"

It is impossible to state with greater accuracy, clearness and intelligibility the essential points of the complaint as were really involved in the trial, without going into great and unnecessary detail as to the means to carry out the combination alleged, than was done by these few words of the judge to the jury, which of itself proves that he was a very able and experienced trier of causes. He then said to them "It is unnecessary for me *to quote further* from this complaint *in view of the number of times* that it *has been referred to,* the *discussion of counsel, the reading,* I think, *of the whole complaint* at the opening of the trial, and the fact that *the complaint will be in your hands when you are deliberating on this case.*"

It requires but little imagination on the part of this Court to perceive from this statement of the judge, that in his judgment the jury, after what had happened during this long trial, were by this time as familiar with the allegations of the complaint as it was possible by any further repetition to make them, and that his course thereupon in placing the complaint in their hands, while they deliberated on the case, was sensible, safe and sufficient and best for the purposes of the case.

But the judge did not stop there. The exigencies of the case required him to further explain to the jury that *the combination* to interfere with the plaintiffs' interstate trade was *essential to the jurisdiction* of the Federal Court, and that it must

be proved to their satisfaction by the evidence or their verdict must be for the defendants. He therefore proceeded to state precisely what were the claims, at the trial, of the defendants and plaintiffs respectively, as to the real purpose of the combination as follows:

> "The defendants, or some of them, say that to interfere with interstate commerce, was not the primary object or purpose which the defendants combined to accomplish; that their purpose was only to unionize the factory here in Connecticut and to suspend work in the plaintiffs' factory temporarily and not to interfere with interstate commerce or trade, except perhaps incidentally, by way of delaying the filing of orders. Now, gentlemen, if you find from the evidence in this case that *that and that only* was what the defendants conspired to do, this court has no jurisdiction and your verdict should be for the defendants. * * * But the plaintiffs say—now you see the distinction here—the plaintiffs say that this scheme that these defendants entered into and conspired to execute, embraced within it, the intent of boycotting the plaintiffs' trade in other states, if necessary, to force the plaintiffs to unionize their factory. So you see the opposing claims of these parties here present a simple question of fact. If there was a conspiracy to directly interfere with the plaintiffs' interstate commerce and trade, if necessary, to compel the plaintiffs to unionize their factory, and in the execution of that scheme they did combine together, through their officers and agents to interfere with the plaintiffs' interstate commerce and trade and did so interfere, then it was a combination for the purpose of doing that which the Act of Congress declares is unlawful; and *for such acts under such a conspiracy the* Federal Court is empowered to grant relief to the in-

jured party. The question *hinges right there.*"

But the judge did not leave the matter there. In order that the plaintiffs might recover it was necessary for them to bring their case squarely and directly within the *seventh* section of the Sherman Act. They must allege and prove, that their business or property had been injured by something *forbidden or declared to be unlawful by that Act.* The only damage to their business or property the plaintiffs could recover in the Federal Court was that which resulted directly and proximately from acts made unlawful *by that Act* and alleged in the complaint. The judge therefore took up that matter and thus stated it to the jury:

> "If it was a part of the original scheme to unlawfully interfere with the plaintiffs' commerce and trade, as I have described, then the plaintiffs are entitled to recover all such damages as they suffered *in the different steps taken leading up to and effecting that object*, excluding however, the steps taken in the State of Connecticut relative to the work here, *except so far as that interfered with interstate commerce*, in the carrying out of the original plan and scheme to force the plaintiffs' factory to become unionized by abridging and destroying its interstate commerce; *or in other words*, if you find the plot was *to boycott the plaintiffs' trade* with parties in sister states, if necessary to unionize their factory, and such boycotting was in fact resorted to, then the plaintiffs are entitled to recover, all such damages as were suffered *in the execution of that plan* to interfere with and destroy his interstate trade. As it had in it an unlawful design that was carried into effect, they are entitled to recover such damages

> as directly and approximately flow from the acts committed prior to the bringing of the suit. *The only acts* of the defendants for which the plaintiffs can recover damages in this case are *such acts set forth in the complaint* as were done by the defendants or their agents before the suit was commenced. * * * It is for you to determine from all the evidence in the case what part, if any, of the plaintiffs' damage, which resulted after the suit was started, was the direct and proximate result of *the alleged wrongful acts* of the defendants before the suit was commenced and allow therefor, *and for that only.*"

The judge thus expressly told the jury what acts of the defendants they could allow damages for and that they must not allow damages for any other acts, and that the damage must be the direct and proximate result of those acts, made unlawful by the Sherman Act, which were alleged in the complaint. In so doing he did all that the law of the case required him to do and in this respect also showed himself to be a most capable and practiced trier of causes.

The arguments and authorities contained in the brief of the defendants in support of the right to strike and the right to boycott are not pertinent to the case, since this Court has held in this and other cases that acts lawful in themselves become unlawful when done in furtherance of an illegal conspiracy.

> *Loewe* vs. *Lawlor*, 208 U. S., 274;
> *Aikens* vs. *Wisconsin*, 195 U. S., 194.

The question is not whether the particular acts performed by the defendants in furtherance of the conspiracy were innocent and lawful, but whether

such acts were done in futherance of the combination to restrain interstate trade, and upon this question the court sufficiently charged the jury. The question whether the strike was in furtherance of the illegal combination was submitted with most explicit instructions. Whether the complaint was limited to strikes caused by coercion was not raised by any request or exception of the defendants, but it is obvious that strikes carried out in furtherance of the illegal combination are tainted with the illegal transaction, whether induced by persuasion or coercion. The allegations of the complaint relative to boycotting are not limited to acts which compel customers involuntarily not to deal with the plaintiffs, and the plaintiffs' right to recovery is not limited to losses due to that cause. The defendants contend to the contrary, and in presenting this point rely upon an extract from the opinion of this Court in this case as follows (Brief of Defendants, p. 12):

> "The combination charged in the complaint falls within the class of restraints of trade aimed at compelling third parties and strangers involuntarily not to engage in the course of trade except on conditions that the combination imposes."

The defendants persist in construing this word "involuntarily" as applying to the plaintiffs' customers, while it is obvious the Court had in mind the plaintiffs only as the "third parties or strangers" which were being involuntarily compelled "not to engage in the course of trade except on conditions that the combination imposes." This interpretation is too clear for argument and is confirmed by the more recent case of Eastern

States Retail Lumber Dealers' Association vs. U. S., 234 U. S., 600, which defendants' counsel realized pretty effectually disposes of the first 110 pages of their brief (p. 110 of their Brief). It appears from the decision in that case that a large group of retail lumber dealers, desiring to protect their business from the inroads of wholesalers who sold directly to consumers, adopted a scheme of issuing lists of wholesalers pursuing such practices. It was a case of a primary as distinguished from a secondary boycott, but this Court held that it was within the Sherman Anti-trust Act. No attempt was made to boycott the customers of the offending wholesaler, as is the case in secondary boycotts so-called. Circulars were issued to all the members of the association in order to acquaint them with the wholesaler's conduct, and the retailers at their option then withdrew patronage. This Court held that it was a combination in violation of the Sherman Anti-trust Act.

Concerning practices of this character remarkably mild as compared with the wrongdoing of the defendants in this case this Court said in that case:

> "But it is said that in order to show a combination or conspiracy within the Sherman Act some agreement must be shown under which the concerted action is taken. It is elementary, however, that conspiracies are seldom capable of proof by direct testimony, and may be inferred from the things actually done; and, when, in this case, by concerted action the names of wholesalers who were reported as having made sales to consumers were periodically reported to the other members of the associations, the conspiracy to

accomplish that which was the natural consequence of such action may be readily inferred.

The circulation of these reports not only tends to directly restrain the freedom of commerce by preventing the listed dealers from entering into competition with retailers, as was held by the district court, but it directly tends to prevent other retailers who have no personal grievance against him, and with whom he might trade, from so doing, they being deterred solely because of the influence of the report circulated among the members of the associations. In other words, the trade of the wholesaler with strangers was directly affected, not because of any supposed wrong which he had done to them, but because of the grievance of a member of one of the associations, who had reported a wrong to himself, which grievance, when brought to the attention of others, it was hoped would deter them from dealing with the offending party. This practice takes the case out of those normal and usual agreements in aid of trade and commerce which may be found not to be within the act, and puts it within the prohibited class of undue and unreasonable restraints, such as was the particular subject of condemnation of Loewe vs. Lawlor, 208 U. S., 274, 300; 52 L. ed., 488, 501; 28 Sup. Ct. Rep., 301; 13 Ann. Cas., 815."

To sum up briefly the untenability of the several assignments discussed under this head. Assignments of error 2 and 3 (p. 12 of their Brief) and assignments 7, 8, 11, 14, 15 (pp. 16-18 of their Brief) are based on refusals to charge, as requested, that recovery must be limited to damages in instances where the plaintiffs' customers were compelled against their will to discontinue business with the plaintiffs. The Court properly refused such requests.

Assignment of error 1 is based on a refusal to charge as requested (p. 12 of their Brief), which was a mere generality, and sufficiently met by the judge's charge in a number of places (fols. 1648-60).

Assignments of error 9 and 10 are based on refusal to charge as requested (p. 15 of their Brief) concerning the union label. Inasmuch as the Court charged the jury that the defendants could only recover for the damages due to the unlawful combination (fols. 1674-5), it was not necessary, and it would not have been pertinent to give any instructions as to the right of the defendants to solicit trade when not acting in the execution of the illegal combination alleged. That right was not at issue and the only way in which the label was involved was where the defendants used it "to aid them in carrying out said conspiracy" (Complaint, fol. 61). The tenth assignment of error was based on an erroneous request to charge that defendants were not liable for losses caused where customers withdrew on account of increased demand for the union label. The issue in the case was whether the defendants used the union label unlawfully as an instrument in executing the combination in restraint of the plaintiffs' interstate trade and the Court expressly limited the plaintiffs' right of recovery to damages which were the result of the illegal acts under the Sherman Act, and if the label was not used for that purpose under the charge of the judge as given, the plaintiffs could not recover for its unlawful use.

In the twentieth assignment of error the Court charged among other things as follows:

"If you find the plot was to boycott the

> plaintiffs' trade with parties in sister states *if necessary* to unionize their factory, and such boycotting was in fact resorted to, then the plaintiff is entitled to recover all such damages as were suffered in the execution of that plan to interfere with and destroy his interstate commerce and trade. As it had in it an unlawful design that was carried into effect he is entitled to recover such damages as directly and approximately flowed from the acts committed prior to the bringing of the suit."

The words "if necessary" were used because of the claim of the defendants that at the time the strike was called they thought it would be immediately successful without resorting to an interstate boycott. If the conspiracy was illegal from its inception and included the intention to resort to an interstate boycott if necessary, then the plaintiffs are entitled to recover the loss due to the strike even though the defendants did not intend to resort to the interstate boycott unless the strike was unsuccessful in unionizing the factory. The plaintiffs' contention in this particular is specifically sustained by the Circuit Court of Appeals for the Sixth Circuit, in the case of Davis vs. United States, 107 Fed., 754, where the Court held that while a conspiracy to resist arrest by flight might not violate the statute, nevertheless a conspiracy which contemplated resistance by force of arms *if necessary* in case flight proved unsuccessful, did violate the statute. The Court sustained an instruction to the jury to that effect and said, "We think that the jury must have understood that the conspiracy in order to be within the statute must have included an agreement to resist the arrest of the accused by force of arms if the attempt to effect his escape by flight should fail, and this we think was not erroneous."

POINT II.

The Circuit Court of Appeals properly construed the Trial Court's charge to the jury on the subject of the individual liability of the defendants.

The Court of Appeals properly construed the trial Court's charge on the subject of the liability of the individual defendants when it said (Record, p. 1925):

> "He left to the jury the question which the judge on the preceding trial regarded as established by such overwhelming proof that he decided it as matter of law, viz., did the defendants know of the combination to destroy the plaintiffs' business?"

This language of the Court of Appeals was almost a literal re-statement of the last words of the trial Judge in his charge to the jury as follows:

> "If they joined a combination the object and purpose of which was to violate the law, and they ought to have known about it, *and you find that they did know about it*, then they come within the law that I have laid down here and you should include them in your verdict, the same as you would any of the other defendants; otherwise not. Take the case, gentlemen."

This direction by the Court put squarely upon the shoulders of the plaintiffs the burden of proving to the satisfaction of the jury that each defendant knew of the existence of the unlawful combination, and purposely joined therein, before it

could include him in its verdict. This was in complete accord with the contentions of the defendants throughout the trial, as shown by the record, and was, in effect, a literal compliance with their 16th request to charge (fol. 1638), which was as follows:

> "If you find that there was such a combination or conspiracy as the Court may charge you is a sufficient basis for this action, then the question of the personal responsibility in damages of any defendant in this action will depend upon whether he *consciously* and *intentionally participated in* or *authorized* such combination."

If there had been any ambiguity or obscurity in the portion of the charge selected for criticism in this assignment of error, when read in connection with what had preceded it, and what followed immediately after, relative to that subject, all doubt must have been removed from the minds of the jury by the above quoted words of the Judge when he delivered the case into their hands. The whole charge, when taken together, shows conclusively that the jury was given to understand clearly, that the Court accepted fully the theory of the defendants' counsel that the jury must find from the evidence that each defendant consciously and intentionally participated in or *authorized* the combination.

At the very outset the Court, in explaining to the jury the nature of the combination or conspiracy which was the indispensable basis of the suit, told them it consisted of "an unlawful *common design*" which two or more persons had "positively or tacitly come to a *common understanding* to accomplish"; that "when an unlawful

end is sought to be effected and two or more persons, *actuated by a common purpose* to accomplish that end, *work together* in any way in furtherance of the unlawful scheme, every one of *such persons* becomes a member of the conspiracy." The Court then repeated its statement, "anyone who, after the conspiracy is formed, *knows of its existence and joins therein*, becomes as much a party thereto *from that time* as if he had originally conspired." And "where several persons *are proved to have combined together* for *the same unlawful purpose* any act done by one of the parties in pursuance of the original *concerted plan* and with reference to the *common object* is in contemplation of the law the act of *the whole party*": that "declarations made by *one* of the parties to *such* a conspiracy, during its *pendency* and in and about its execution are not only evidence against himself, but are evidence against the *other parties*, who, *when such combination is proved*, are as much responsible for such declaration and such acts to which they relate, as *if made by themselves*."

By that time the jury must have clearly understood from the words of the Judge that the very essence of the liability of each defendant which lay at the base of the suit was the common unlawful design which he had consciously and intentionally participated in, or had consciously and intentionally authorized, and that the burden of proving knowledge and intent to the satisfaction of the jury was upon the plaintiffs.

The Court then proceeded to take up the claim that some of the defendants had no knowledge of the alleged conspiracy and said "many of these defendants have gone upon the stand and testified

that they had *no knowledge* that the officers and agents of the labor unions to which they belonged, had been or were to become members of a conspiracy to interfere with the interstate trade and commerce of the plaintiffs." It then repeated the statement as follows: "Now, I have boiled their testimony down to *this single expression*—as you have heard it all you remember it as well as I do, the *force of it* was that they had *no knowledge* of this conspiracy to interfere with the interstate commerce and trade of the plaintiffs—*which*, as I say, *gives this Court jurisdiction*." The Court next referred to the evidence in the case bearing upon this subject, which it said, "are all matters to be considered by you in passing upon the question as to whether or not the boycotting of the plaintiffs' trade in other states, was approved or *warranted by the individual members of the association*," which, we repeat, was the very point of the defendants' 16th request to charge. The Court next used the following words, of which the defendants here complain: "Now, if this evidence falls short of satisfying you that certain of the defendants did know of this unlawful conspiracy or were in duty bound to know of it, or did tacitly approve of it, then such defendants should be acquitted." But the Court immediately and before completing the sentence, proceeded to define its meaning to be what it had so often reiterated before, "or *in other words*, assuming that there was a conspiracy to violate the federal statute *as I have explained to you*, and that the statute was, in fact, violated, to the damage of the plaintiffs, then *every person* who had a part in *planning* or a hand in *executing* or *aided* or *abetted* therein is jointly liable." The Court then took pains to point out to the jury that simple *membership* in the union and the payment of dues

were not sufficient proof, without other evidence, of counseling, advising and abetting therein. Something more must be shown in order to hold a defendant. The Court then stated what additional proof might warrant them in finding that such defendant had so counseled, advised, aided or abetted as follows: "If these members paid their dues and continued to delegate authority to their officers and agents to commit unlawful deeds, which, in this case, is the interference with the plaintiffs' interstate trade and commerce, under such circumstances as lead you to believe that they knew or ought to have known, and that such officers and agents were, in that matter, warranted in the belief that they were acting within their delegated authority, then such members are jointly liable, and no others. If the evidence falls short of this as to any of the defendants, then such defendants should be acquitted. This presents a question of fact for your determination, and you should consider all the evidence and the circumstances bearing upon it. The testimony of the defendants who have been upon the stand, the concessions made as to what would have been the testimony of those who did not testify, the opportunity they had of knowing what the officers and agents were doing and their interest in the case, are all material for your consideration upon this subject. If you find that any of these defendants should not be holden and are not able to designate the name of such person, you are at liberty to come into court and ask through your foreman for further instructions as to such name or names."

The Court then passed to other subjects and did not refer again to this matter until the very close of the charge, when it again stated the issue

in the following explicit and emphatic words, heretofore quoted: "If they joined a combination the object and purpose of which was to violate the law, and they ought to have known about it, *and you find that they did know about it,* then they come within the law that I have laid down here and you should include them in your verdict, the same as you would any of the other defendants; *otherwise not.* Take the case, gentlemen."

We respectfully submit that the foregoing analysis of the Judge's charge shows that he committed no error, prejudicial to the plaintiffs-in-error, on this subject, and that it fully supports the conclusion of the Court of Appeals as follows (Record, p. 1925):

> "The defendants excepted to this charge and have presented the question by proper assignments of error. The principal criticism of the charge is directed to the use of the words 'or ought to have known' in the last paragraph quoted above. If these words had been used alone, with no qualification or explanation, there might be some room for criticism, but when considered in connection with the rest of the charge, we are entirely satisfied that the jury could not have been misled."

The charge as a whole went the full length of the defendants' contention and they, at least, cannot be heard to complain of it.

The word "ought" as used by the trial Judge was properly construed by the Circuit Court of Appealss to mean "must".

Jackson v. *State*, 22 S. W. Rep., 839 (Texas);
Texas Life Assn. of America v. *St. Louis Co.*, 49 Mo., 519.

POINT III.

Moreover, since the Union officers were acting within the scope of their employment and the organization's purposes, and the defendants' conduct warranted them in assuming that they acted with defendants' authority and approval, all the defendants are liable.

The evidence showed that the American Federation of Labor and the United Hatters were unlawful combinations in violation of the anti-trust law; that they were interstate combinations formed to secure profit for their members by compelling others not to engage in interstate trade except upon terms which they imposed, and by artificial means to restrict their liberty to engage therein, and to control, through concerted action, the course of such interstate trade; that concerted action was to be exerted through the withdrawal of patronage from the dealers who should handle the hats of manufacturers whose shops were not unionized, and through threats thereof, and through concerted withdrawal from employment and of patronage of such manufacturers; that a union label was adopted and used not only to promote the sale of hats made by the members of the combination, but also as a boycotting instrument and device to point out the hats, interstate trade in which was to be restrained; that their constitutions, by-laws, regulations and practices provide for such boycotting, use of the union label and strikes; that since their organization they have been continuously engaged in the institution

and prosecution of interstate boycotts through the authority of conventions in which were embodied the power to make and change the fundamental law of the combinations, and in which by the terms of the constitutions resided the ultimate power of the associations; that all such boycotts were prosecuted for constitutional ends by the constituted officers of the combinations, in accordance with the rules and regulations of the combinations, and for their benefit, and were carefully reported to the members of the combinations through regular conventions in accordance with their constitutions, and by the official printed proceedings of such conventions and by official journals established by the membership, and at the local meetings; that the expense of these operations and the salaries of the representatives of the combinations carrying them on for their benefit were borne by the members of the combinations, and sometimes through special assessments, and constituted a large portion of the entire disbursements of the combinations; that these activities constituted the principal industry of the combinations and the object of their greatest expenditures, and their officers and agents took extraordinary means to bring informations thereof to every member.

The facts thus proven established the nature and purposes of the combinations and the authority of the officers in carrying them out. The character of the combinations and the authority of their officers and agents, under their scheme of organization, did not vary with the different defendants according to their private conception or intentions, the amount of their individual information as to particular acts, or their personal

ethics. The long-continued practical interpretation of the constitutions and purposes of the organizations, thus shown by uniform usages, followed by constitutionally elected officers, for constitutional ends, and never dissented from by any member under the circumstances shown by the evidence was as much a part of their constitutions as their written words, and on this point there is little evidential value in the negative testimony of even a hundred members, who said that they stayed at home and were therefore not familiar with its affairs, objects and purposes.

That this combination called the United Hatters planned, instituted and carried out the attack upon the plaintiffs is not disputed. It had the sanction of their duly elected agents, officers, directors and conventions, was carried out in furtherance of express constitutional objects, and was maintained and financed by the pro-rata contributions of each individual member. It cannot be successfully contended that the attack on the plaintiffs was a departure from the purposes and practices of these combinations called the American Federation of Labor and the United Hatters. It is impossible to see wherein the continuous operations to prevent the sale of non-union goods should be regarded as separable or independent from the purposes and operations of these organizations.

Their scheme of organization is accurately described in the following language of the Supreme Court of Connecticut in Grand Lodge of Conn. vs. Grand Lodge of Mass., 81 Conn., 203:

> "Here we have outlined the familiar scheme of organization, usually resorted to where bodies of persons, widely scattered or

numerous, are associated for a common purpose. The ultimate source of authority is found in the individual members who are gathered into the lowest organic groups and exercise their right of government by representative methods. There is a body of organic law which defines what the details of organization shall be and the powers committed to the governmental agencies thus created. To this body of organic law the whole organization, its agencies of government and members, are alike, subject, and under it all the powers which are exercised within and in the name of the organization, are exercised and all its rights and privileges enjoyed. This law, which is the expression of the will of the membership, enters into all the relations created by the organization and operates to define and limit them and the rights and privileges which the organization bestows. By this organic law there is created as a part of the chosen system of government a representative body in which is reposed a supreme authority as respects organization, government, regulation, and discipline, which is defined by the fundamental law. Between it and the individual units of membership are one or more intermediate bodies subordinate to the supreme body, also existing by the fundamental law, and all exercising authority (and in the event of two or more, gradations of authority), which is conferred under and defined by that law. These various bodies, supreme or subordinate, are in no sense separate and independent. They are only inter-related parts of a single, comprehensive, unified system existing as the result of the will of the membership of the general body, under a common law which comes from that membership subject to a common authority created by that membership and seeking common ends which are the concern of every member."

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If, therefore, the trial Court in its charge had gone further than it did, and had told the jury that disclaimers of knowledge by individual defendants, even if they believed them to be true, would not necessarily exonerate such individual defendants from liability to the plaintiffs, it would not have been improper. Under the circumstances of the case we think the charge of the trial Court was, if anything, too favorable to the defendants on the subject of their individual liability.

The question raised by defendants' contentions is whether certain members of these combinations, whose purposes are indisputable, can escape responsibility for what was done in furtherance of said purposes by disclaiming knowledge or recollection as to what those purposes are or denying comprehension of the true nature of the combinations. They seek to have their responsibility determined in accordance with their *memories, recollections* or *conscious participation*. In their eighteenth assignment of error (p. 158 Defts.' Brief) they ask for reversal because the Court refused to charge that they were not liable if they did not *recollect* or *remember* that their officers were doing these unlawful acts and did not *recollect* or *remember* reading the journals or reports on that subject. Surely they are far astray, for if the jury found that these defendants did know about the acts at the time thereof and authorized them, they could not exonerate the defendants because they had *forgotten*.

Where the purposes, practices, rules and regulations of a combination provide for specific operations the members thereof cannot be heard to say, as contended by the defendants, that they had

not "consciously and intentionally participated or authorized such combination" (Assignment of Error 16, p. 157, Defts.' Brief). Such a request is erroneous, for if the defendants authorized the acts it is immaterial whether they did so consciously and intentionally. This is particularly true where it is expressly agreed that the execution of the combinations' purposes shall be entrusted to selected agents chosen in accordance with accepted rules whose authority is determined by the character of the combination rather than the individual attitude of any member thereof.

The combination is the agency created by and for the members to carry out certain agreed purposes through officers and agents selected by methods provided for in the rules of the combination. If the combination, through its selected agents, departs from the purposes for which it was originally authorized or created, or for which it has been subsequently pledged or utilized by common consent, then the members thereof, who were not responsible for such departure, are not liable. But all members are liable for all acts done by the selected agents in furtherance of its purposes. Under such circumstances, knowledge and authority is conclusively presumed. The question is not solely whether the members actually did know of the unlawful acts, but whether they ought to have known, or were in duty bound to know. This is another way of arriving at substantially the same conclusion as was reached by the Circuit Court of Appeals in its interpretation of the Trial Court's use of these phrases. But the Trial Court went further and laid down another restrictive rule in charging that the plain-

tiffs could only recover in the event they proved that

> "unlawful means had been so frequently used with the express or tacit approval of the Association that its agents were warranted in assuming that they might use such unlawful means in the future, and that the Association and its individual members would approve or tolerate such use." (Fols. 1667-1671).

This was in accordance with the opinion of the Circuit Court of Appeals on the first appeal and is more favorable to the defendants than the ordinary rule of *respondeat superior*, which defines responsibility of a member for the acts of his agents or agency. It was based upon the overwhelming evidence that the unlawful acts had been carried on unceasingly for many years by this agency, and its selected representatives, who, after taking unusual steps to publish their doings to all members of the combination by means of reports, monthly journals, printed convention proceedings and local meetings, etc., had been unanimously re-elected. Could ignorance of a servant's act be a defense where this ignorance, if it could be believed, was based upon negligence, willfulness or stupidity? The doctrine that knowledge would be presumed in cases of this character has found support in many cases.

In the case of *Rogers* v. *Vicksburg, etc., Co.*, 194 Fed., 65, the defendant railroad company chartered a special train at night time which was used for a lynching party, and the train was boarded in such a peculiar way and at such peculiar times and places that it seemed a necessary conclusion that the train crew must have known the unlawful

purposes for which the train was being run. In a civil action based on the statute giving a cause of action to the representatives of the murdered man, the railroad defended on the ground that it never authorized its train to be used for such purposes and that even its crew did not know for what it was being used. In defining the railroad's responsibility the Circuit Court of Appeals for the Fifth Circuit said:

> "Did the company's agents know or ought they to have known at any time previous to the landing of the mob at Tallulah the object and the purposes of the gathering and the hiring of the special train? Under the evidence mainly recited in the foregoing statement, these questions can only be answered by a jury. The railroad company was present throughout by its authorized agents, and if the witnesses are to be believed, these agents knew or ought to have known long before the special train reached Tallulah that the object and purposes of the trip were unlawful."

In a New York State case damages were assessed against a union for unlawful picketing, etc. The union contended that there was no evidence that it knew of the unlawful conduct, but the Court said:

> "Both lodges, however, maintained the strike by money contributions made at frequent and stated intervals to support the strikers and especially the picketing. It does not appear that the above recited unlawful conduct of the picketing was ever expressly brought to the notice of a meeting of either lodge, but the same must have been well known to their representatives. The business agent of district lodge No. 15 frequently

visited the scene of the strike, attended local meetings of the strikers and if he had kept his eyes and ears open must have become well informed as to the unlawful character of the picketing, viz., the constant and public use of abusive epithets by the pickets as above described. Those things were done so openly and regularly that anyone interested in the conduct of the strike could by the least observation or inquiry have ascertained them at any time for months."

Jones v. *Maher*, 116 Supp., 180.

"His authority may be by parol and collected from circumstances. It may be inferred from the general manner in which for a period sufficiently long to establish a settled course of business he has been allowed without interference to conduct the affairs of the bank. It may be implied from the conduct or acquiescence of the corporation as represented by the board of directors. When during a series of years or in numerous business transactions he has been permitted without objection and in his official capacity to pursue a particular course of conduct; it may be presumed as between the bank and those who in good faith deal with it, upon the basis of his authority to represent the corporation, that he has acted in conformity with instructions received from those who have the right to control its operations. Directors cannot in justice to those who deal with the bank shut their eyes to what is going on around them. It is their duty to use ordinary diligence in ascertaining the condition of its business, and to exercise reasonable control and supervision of its officers. *That which they ought by proper diligence to have known as to the general course of business in the bank they may be presumed to have known in any contest between the corporation and*

those who are justified by the circumstances in dealing with its officers upon the basis of that course of business.''

Martin v. *Webb,* 110 U. S., 7.

"He will not be exempted from criminal responsibility for the agent's criminal acts, if the latter has been enabled to commit them through want of proper care and oversight or other negligence on the part of the principal in reference to the business in which the agent is employed."

Clark and Sykes on Agency, p. 1141.
Commonwealth v. *Morgan,* 107 Mass., 199.

But it is not necessary to resort to special cases for, according to our contentions, the question is to be determined by applying the familiar principles underlying the relation of principal and agent, whereby the principal is held liable for the acts of his agent done within the scope of his authority, even though he did not know of them. It is specifically alleged in the complaint that these acts were carried out by the defendants through the employment of agents authorized thereunto, but even if the complaint had omitted all reference to the employment of authorized agents, the plaintiffs could have established their case by proving that the wrongful acts of which they complain were performed by agents of the defendants acting within the scope of their authority. This point has been settled by this Court.

"Now the legal effect of an agreement made by an agent for his principal whilst the agent is acting within the scope of his authority, is that it is the agreement of the principal.

Accordingly, it is settled that the allegation that a party made, accepted, indorsed or delivered a bill of exchange, is sufficient, although the defendant did not in fact do either of these acts himself, provided he authorized the doing of them. (Chitty on Bills, 356, and the authorities there cited. This principle has been applied too in actions *ex delicto* as well as *ex contractu*. In 6 Term Rep., 659, it was held that an allegation that the defendant had negligently driven his cart against plaintiff's horse, was supported by evidence that defendant's servant drove the cart. In this aspect of the question, it was one not of pleading but of evidence. If, on the contrary, the act was one in their regular line of duty, then of course the averment was unnecessary."

The Bank of Metropolis v. *Guttschlick*, 14 Pet., 19; 10 L. ed., 335.

The Court would have been justified in charging the jury that the individual defendants were liable in damages to the plaintiffs for the acts of the combination and its agents without proof of knowledge on the part of such defendants, provided that such agents were acting within the scope of their authority and of the combination's purposes.

The relations between members of an association and between partners depend alike upon the application of the rules of principal and agent, the sole difference being that each member of a partnership is the agent of all the other partners, while in a large association members agree upon one or more executive agents who jointly represent them.

"An unincorporated company is funda-

mentally a large partnership, except that it is not bound by the acts of the individual partners, but only by those of its directors or managers."

Dicey on Parties, p. 170.

"That it is now quite generally settled that such organizations are not liable as partners but that their liability is determined upon the rules of principal and agent."

Meacham on Agency, Par. 72.

"When a number of persons become members of a club or society for social, political, religious or charitable purposes, without becoming incorporated, the law does not regard them collectively as a legal entity or artificial person, like a corporation, but merely as so many individuals, and it necessarily follows that the club or society, as such, cannot appoint or have an agent. The members may appoint an agent, but in such a case he is the agent of the members as individuals and they are joint principals."

Clark & Sykes on Agency, p. 61.
Willcox v. *Arnold*, 162 Mass., 577.

"This individual liability arises not on the ground that the members of such an association are partners, but on the ground that the society is their agent in the premises, and hence they are bound by all its acts if done within the scope of its authority."

McDermott v. *Wilhelmina*, 24 R. I., 535;
Supreme Lodge v. *Knight*, 117 Ind., 489.

If the relation of the union officers to its mem-

bers is that of principal and agent, then it is undeniable that the principal is liable for the wrong done by the agent within the scope of his employment, even though that wrongful act was forbidden.

> "And this is the rule when the act is done by the agent in the course of his employment, although done wantonly or recklessly or against the express orders of the principal. In such cases the liability is not imputed because the principal actually participates in the malice or fraud, but because the act is done for the benefit of the principal while the agent is acting within the scope of his employment in the business of the principal, and justice requires that the latter shall be held responsible for damages to the individual who has suffered by such conduct. Lothrop vs. Adams, 133 Mass., 471; 43 Am. Rep., 528.
>
> "A corporation is held responsible for acts not within the agent's corporate powers strictly construed, but which the agent has assumed to perform for the corporation when employing the corporate powers actually authorized, and in such cases there need be no written authority under seal or vote of the corporation in order to constitute the agency or to authorize the act. Washington Gaslight Co., vs. Lansden, 172 U. S., 534, 544; 43 ed., 543, 547; 19 Sup. Ct. Rep., 296."
>
> *New York Central* v. *U. S.*, 212 U. S., 481; 53 L. ed., 613.

"The rule of *respondeat superior*, or that the master shall be civilly liable for the tortious acts of his servant, is of universal application whether the act be one of omission or commission, whether negligent, fraudulent or deceitful. If it be done in the course of his employment, the master is liable and

it makes no difference that the master did not authorize, or even know of the servant's act or neglect, or even if he disapproved or forbade it; he is equally liable if the act be done in the course of his servant's employment. (See Story on Agency, Sec. 452; Smith on Master and Servant, 152").

Phila. & Reading R. R. Co. v. *Derby*, 14 How., 468; 14 L.ed., 502;
Lake Shore, etc., Ry. Co., v. *Prentice*, 147 U. S., 103; 37 L. ed., 97;
Holmes on Agency, 4 Harv. Law Rev., 348.
Wigmore, 7 Harv. Law Rev., 315, 384, 440.

In conspiracy cases this is equally true, whether the jury considers the parties to have acted in conjunction *as principals*, or that some of them acted strictly *as agents* for the others.

Am. Fur Co. v. *U. S.*, 2 Pet. (U. S.), 358; 7 L. ed., 450;
U. S. v. *Gooding*, 12 Wheat., 460.

In civil transactions the principals are affected by the *knowledge* of their agents and the knowledge of the agents is in law attributed to the principals. "The tortious acts of the agent is the acts of his principals if done in the course of his agency, though not directly authorized. *And this is emphatically true when the principals have received and appropriated the benefits of the act.*"

Stockwell v. *U. S.*, 13 Wall., 531; 20 L. ed., 495.

The rule is none the less applicable because the

statute under which the suit is brought provides for treble damages.

Stockwell v. *U. S.* (*supra*),

and it has been held that a suit for treble damages under this statute is not a penal suit.

Chattanooga Foundry Co. v. *Atlanta*, 203 U. S., 390 (51 L. ed., 243), and *Judge Lurton's Opinion*, 127 Fed., 28.

The intent to restrain plaintiffs' interstate commerce will be imputed to the defendants if it was entertained by their agents, the officers of the union, under the circumstances of this case.

> "The foundation of the imputation is not that it inferred that the principal actually participated in the malice or fraud, but the act having been done for his benefit by his agent acting within the scope of his employment in his business, it is just that he should be held responsible for it in damages."
>
> *Lake Shore & Mich. Co.* v. *Prentice*, 147 U. S., 110; 37 L. ed., 102.

In the case of Benton v. Minneapolis Tailoring Co., 73 Minn., 498 (cited by defendants, p. 150), was involved the question whether one Ellison, who contemplated a purchase of goods from one McLeod was engaged in a conspiracy with McLeod and others to defraud creditors. Plaintiffs urged that the attorney at law who represented Ellison and was interested in having Ellison make the purchase, knew of the conspiracy and that his knowledge should be imputed to Ellison. The Court pointed out the well-recognized doc-

trine that the agent's knowledge will not be imputed to the principal where circumstances make it for his interests to conceal the facts and deceive his principal. Then the Court said:

> "If Ellison *believed, or had good reason to believe,* that the claim of ownership asserted by Neal, Morse & Company was well founded, he proceeded with due care and caution."

If the case is an authority for the proposition that a principal cannot be held vicariously liable for the frauds of his agent when done within the scope of his employment, it is against the authorities of this Court.

But such proof would not be sufficient, as defendants suggest, to make them all criminally liable. The intent imputed to them for the purposes of remedial relief under the statute would not be necessarily sufficient to support criminal proceedings.

> *Stone* v. *U. S.*, 167 U. S., 178 (42 L. ed., 127);
> *Lake Shore & Mich. So.* v. *Prentice* (*supra*).

> "It is certainly a general rule that in criminal law no man is responsible unless he has been guilty both of a criminal act or omission and a criminal or unlawful intent. Without the latter there can in general be no crime. And it may be plausibly argued that the reason of this rule applies to all penal statutes. So far, however, as I can learn, penal statutes not authorizing indictments, have never been considered as within the rule."

> *U. S.* v. *Thomasson*, 4 Biss., 101.

Defendants have quoted from Justice Holmes' dissenting opinion in the Northern Securities case, 193 U. S., 402, which states that the statute must be construed the same whether the proceeding is criminal or civil. This is inapplicable. The learned Justice had in mind the character of the combination forbidden by the act and not the principle of responsibility of one for the acts of another. Responsibility in a civil suit may be established by facts which would not sustain a criminal prosecution, because the degree of proof required in criminal cases is greater than in civil cases, and because in civil cases a man may be held responsible for the acts of his agent even though he is otherwise innocent.

Applying these rules of principal and agent or of *respondeat superior* to the case at bar, it is obvious that all of the operations of the United Hatters and the Federation which were nothing but combinations of individuals acting under a common name, were within the objects and scope of these respective associations; that every act of officer and agent was within the scope of his employment, and that all said acts were done in behalf of the membership and furtherance of the association's purposes for which the defendants contributed their dues. References to the constitution of the Federation prove that it is pledged to boycotts and to aid in all industrial disputes, and references to the constitution of the United Hatters prove that it is pledged to the usual trade union practices of conducting strikes and union label agitation. The defendants themselves offer affirmative testimony as to these activities. If these operations are expressly authorized, then none of the acts complained of can be beyond the

scope of the purposes of these respective associations. If a lawful strike is authorized, a strike to restrain trade is not beyond the scope of the association. If union label agitation is authorized, efforts to suppress the sale of competing goods without the label are not beyond the association's scope and purposes.

First, as to boycotting: The constitution of the Federation expressly provides for it. The United Hatters in their constitution are bound by the Federation's constitution. Every defendant occupies the same relation to the Federation as he does to the United Hatters and is bound alike by the constitution of each. The United Hatters' constitution forbids the sale of non-union hats (fol. 494). But it is not necessary to go as far as this. If it is part of the union's objects and purposes and the duties of its officers to promote the sale of union hats, it cannot be outside of the scope of their authority, according to the decisions of the United States Supreme Court, to defraud dealers for that purpose (Castle v. Bullard, 23 How., 172). The same rule woul dalso apply to acts of intimidation in furtherance of the same end. All of the testimony in the case shows that there was at times a very narrow and indistinct line between the proper efforts of the agents to boom the union label and their improper efforts to boom it by intimidation, or to injure plaintiffs; it is but a short step from one to the other. The same agent may call upon A and speak highly of the union label; call upon B, and in praising the union label suggest that it is well to be friendly to labor organizations; call upon C, and in praising the union label suggest that labor unions do not like to handle non-union hats; call upon D,

and suggest that the man who sells union hats exclusively will enjoy the patronage of union labor. Some of these acts may be done properly or for the purpose of injuring plaintiffs; we step almost imperceptibly from the realm of proper advertising to the realm of illegal boycotting and a violation of the Sherman Anti-Trust law. Can it be said that while some of these methods are the avowed and unquestioned practices of the officers and the organization, that the others are entirely without the scope of the authority of the officers and the purposes of the organization? The law is the contrary.

In an English case it appeared that both plaintiff and defendant corporations were engaged in running public omnibuses, and servants of the defendant corporation set about to obstruct and molest the plaintiff and hinder and frighten and deter large numbers of passengers from entering its omnibuses. They hissed, insulted, assaulted and beat plaintiff's servants, and bruised and damaged the 'buses and horses of the plaintiff. The question arose as to whether such acts were within the scope of the business of the defendant corporation, and the famous Chief Justice Erle, of the Common Pleas, said:

> "But I should state that the whole of the acts that are charged against the defendants are acts connected with the driving of their vehicles, and the object of this incorporation was for the purpose of driving omnibuses. It is the 'London General Omnibus Company', incorporated for that purpose, and therefore the actual things done by their defendants are acts within the purpose of the incorporation, and unless they had been wrongfully done; of courses there could be

no ground of complaint; but being wrongfully done we think, clearly the action lies, and that there are abundance of authorities to show that under those circumstances the action would lie. * * * We think it extremely important, if they do admit that they have in fact intentionally committed a wrong, that the public should have a remedy against them and not have a remedy against their servants and others whom they have employed, many of whom may be entirely incapable of giving the recompense that the law awards."

Green v. *The London General Omnibus Co.*, 1 L. T. Rep., 95;
Limpus v. *The London Gen. Omnibus Co.*, 1 H. & C., 526.

The contentions of the two opposing counsel and the questions of the Chief Justice in this case are illuminating, and the case shows that boycotting was within the scope of the corporation's authority and must also be within the authority of the United Hatters.

Strikes are Governed by the Same Rule.

If it is within the express authority of the organization to conduct strikes, how can it possibly be contended that illegal strikes carried on in furtherance of the constitutional purposes of the organization are not within the scope of the officers' authority and the organization's purposes?

In the famous Taft Vale case, the defendant union resorted to illegal methods to prevent men working for plaintiffs, and Justice Farwell, in the opinion which was upheld, said:

"The acts complained of are the acts of the association. They are acts done by their agents in the course of the management and direction of a strike; the undertaking such management and direction is one of the main objects of the defendant society and is perfectly lawful; but the society in undertaking such management and direction, undertook also the responsibility for the manner in which the strike is carried out. * * * For such wrongs, arising as they do from the wrongful conduct of the agents of the society in the course of managing a strike, which is a lawful object of the society, the defendant society is, in my opinion, liable. * * * I have already held that the society is liable for the acts of their agents to the same extent that they would be if they were a corporation, and it is abundantly clear that a corporation under the circumstances of this case would be liable. * * * Granted that the principal has not authorized the particular act, but he has put the agent in his place to do that class of acts and he is answerable for the manner in which the agent has conducted himself in doing the business with which the principal has entrusted him."

Taff Vale Ry. v. *Amalgamated Society*, 1901 A. C., 426.

The question of the scope of the authority of union officers arose in the case of Giblan vs. National Amalgamated Laborers' Union, 2 K. B., 600 (1903), and was there thoroughly discussed and considered. The union claimed that the plaintiff had defaulted with the union funds and he was accordingly expelled. Later, strikes were called and threatened against several successive employers of the plaintiff, with the purpose and effect of compelling his discharge. Union men were also fined for working with him. The union

in defense "stated that they did not authorize or direct the defendants (their officers) to do the acts", and that "such acts were beyond their power." All the judges agreed that the union was responsible and that such responsibility was determined by the fact that the officers were pursuing their duties in attempting to compel the plaintiff to return the money misappropriated. Justice Stirling said:

> "Now, Williams and Toomey were the servants and agents of the trade union; and the principle which governs the liability of the last-named defendants for the acts of their agent is expressed with great clearness by Willis, J., in delivering the judgment of the Court of Exchequer Chamber in Barwick vs. English Joint Stock Bank. (1.) He says: 'The general rule is that the master is answerable for every such wrong of the servant or agent as is committed in the course of the service and for the master's benefit, though no express command or privity of the master be proved.' This principle was expressly held to be applicable to trade unions in Taff Vale Ry. Co. vs. Amalgamated Society of Engineers.
>
> It is, then, to be inquired whether Williams and Toomey committed the acts complained of in the course of the service of the trade union and for the benefit of that body. Under the rules of the union it was part of the duties of the executive committee to protect its funds from misappropriation, with power to prosecute any officer of the union or member or other person who appropriated, misapplied, or withheld, the funds of the union. The executive committee clearly had power to direct the officers of the union to recover the funds misappropriated by the plaintiff. Further, in the absence of the executive committee, Williams, the general secretary, had

> full power to take any action for the executive committee that the rules allowed. It must be taken that Williams and Toomey, in doing what they did, were acting as officers of the union charged with the duty of recovering the misappropriated fund from the plaintiff. What they did was a tort. Further, it was committed for the benefit of the union. It seems to me that all the conditions pointed out by Willis, J., were satisfied. It was said, however, that the acts of the defendants Williams and Toomey were beyond the powers of the executive committee as defined by rule 14. It may be that, if a member of the trade union had applied to the Court to interfere by way of injunction to restrain those two defendants from committing the acts of which the plaintiff complains, the Court would have seen its way to interfere."

In the case of Kinver v. Phoenix Lodge, 7 Ont. Rep., 387, the lodges were sued for injuries due to assaults committed during initiation, and it was contended in defense that they were "unauthorized acts of some of the members of the body." To this the Court replied:

> "The proceedings being taken in open lodge, while the principal officers and a number of the members were present, so as to constitute a full and perfect meeting, and where none but members and the candidate were or could be present, is manifestly a proceeding taken with the knowledge of all those who were there and represented the corporate body; and where it appears that these and the other proceedings had taken place on such an occasion and that they were allowed and not checked, it shows, I think, that they were taken also with the consent of the body which was then in open lodge assembled."

Pennant, in his book on Trade Unions, page 81, says:

> "Both a corporation and a voluntary association can appoint and act by agents, and a trade union is recognized by Sec. 11 of the Act of 1871 as having the power of doing so; it follows that it is responsible for what its agents do in pursuance of the authority entrusted to them (Barwick vs. Joint Stock Bank [1867], L. R., 2 Ex., 259). And this involves the consideration of the way in which agents are appointed and entrusted with authority by trade unions."

In the case *Lucke* v. *Clothing Cutters*, 19 L. R. A., 408, it appeared that the things done by the organization were forbidden by the by-laws but the trade union was nevertheless held responsible.

If an association can be held for the unauthorized acts of its officers who are acting within the scope of the association's purposes, there would seem to be no good reason why the members of that association could not be held liable for civil wrongs committed by said officers, since the officers were the agents of each one of the members and the members are not protected by incorporation. The limited liability of the members may be urged with more propriety when the claim is based upon contract, because in such a case the injured party voluntarily elects to deal with the officers of the association and it may be proper for the law to impose upon that person the duty of definitely ascertaining the limits of the officer's authority. In the case of torts, however, where the agents of an association employ the power and machinery of the association to injure a third party without the third party electing to

have any relation with the association or its officers, the situation calls for broader rules in determining the liability of the association and its members, and the law has applied a broader rule.

Why should members of an unincorporated association have limited liability without submitting to incorporation? It is easy to protect themselves if they will take a charter from the State. Some responsibility to society is essential. And an unincorporated association cannot be sued at common law.

In the case of the Illinois Central Railroad Co. vs. the International Association, 190 Fed., 910, an injunction was issued against unlawful picketing and intimidation, but when the individual members sought to escape responsibility for the wrongful acts of their officers which were unauthorized by them, the court said:

> "Being unable to control the agencies they aided in creating, they must now anwer for the conduct of their agents and be alike held as principals with them for the unlawful combinations and conduct described in the complainant's bill of complaint and supported by the numerous affidavits read upon the hearing of this cause."

In the case of Aluminum Castings Co. v. Local No. 84, 197 Fed., 221, the Court said:

> "The union and its officers must not lose sight of the fact that from its membership it has formed a strike committee under whose supervision and subject to whose orders the striking members concededly are. It supervises the picketing and patroling of the premises of the complainant, putting it to

> large expense to protect its workmen and property, and though picketing is not unlawful *per se*, yet it is to be considered that where picketing is accompanied by threats of violence and intimidation, that which is in itself lawful becomes unlawful, and the union, its officers and members having actual or presumptive knowledge of such acts, may be enjoined."

In the case of Schultz v. Frankfort Co., 139 N. W., 387, the Court said:

> "The plaintiff in a suit for civil damages caused by conspiracy may invoke for the purpose of connecting any person with the tort either the rule *respondeat superior* or the rule above stated relative to the acts and admissions of co-conspirators, and this is so elementary as not to require the citation of authority in its support. In this case there is evidence tending to hold the defendants, Gordon & Bacher, under the conspiracy rule, and the defendant insurance company under this same rule as well as under the rule *respondeat superior*."

In the case of Patch Mfg. Co. v. Protection Lodge, 77 Vt., 294, a judgment was obtained against a trade union on account of damages caused by boycotting and intimidation, and no one apparently raised the question that the officers had no power to make the organization liable if they sanctioned and took part in the unlawful conduct. Subsequently, when the judgment against the association was returned partially unsatisfied, an action was brought under the State statute to recover the deficiency from the members, and the Court held in effect that the statute was for the benefit of the members pro-

viding for a pro-rating of an *original* liability which existed at common law. (F. R. Patch Mfg Co. v. Capeless, 63 Atl., 939.)

In the case of Vredenburg v. Behan, 33 La. Ann. Rep., 627, a suit was brought against the members of a rifle club because of injury caused by the escape of a ferocious bear which was kept on the premises of the society by its officials. One of the defendants attempted to defend by denying knowledge of the fact that the bear was on the premises, but the Court said:

> "This club was composed of many individuals; it had a complete organization, with regular officers, governing committee, keeper of the grounds, etc. The defendant referred to was the head or chief of the association. Of course from the nature and object of the organization it was not contemplated nor was it possible that all the members thereof, the owners of the club-house and lessees of the grounds should occupy the property; and, therefore, it was necessarily placed in the control and keeping of employees of the club, who were charged with its management, and with the proper police and superintendence of the club-house and grounds, and generally with the same duties that the owners themselves were subject to, and who in this respect represented the owners, who were legally responsible for the acts and omissions of such keeper or keepers. Nor can the fact of knowledge or ignorance of the employers touching such acts or omissions on the part of the employees restrict or enlarge that responsibility. It is a case where the principle of *respondeat superior* applies to its full extent.
>
> A reference to the authorities on this subject leaves no room for doubt on this point.

Thus a distinguished law writer has declared that 'the master is liable for the acts of his servant, not only when they are directed by him, but also when the scope of his employment or trust is such that he has been left at liberty to do, while pursuing or attempting to discharge it, the injurious act complained of. It is not merely for the wrongful acts he was directed to do, *but the wrongful acts he was suffered to do, that the master must respond'.*"

In a Connecticut case, the **Court said:**

"Individual members of an unincorporated association are liable for contracts made in the name of the association, without regard to the question whether they so intended or so understood the law, and even if the other party contracted in form with the association and was ignorant of the names of the individual members composing it. And it is also held in the case just cited that the individual members of such an association do not acquire any immunity from individual liability by force of the statutes which provide that any number of persons associated and known by some distinguishing name may sue and be sued, plead and be impleaded, by such name, and that the individual property of the members shall not be liable to attachment or levy of execution in a suit brought against the association."

Lawler v. *Murphy*, 58 Conn., 294; 8 L. R. A., 112.

"It is established by repeated decisions in this state that a tort for which the partnership is liable makes every member of the firm severally individually liable. Such liability is not dependent upon the personal wrong of

the individual members of the partnership against which the liability is asserted. Such personal liability exists even if the wrong was committed by an employee. The test of the liability is based upon a determination of the question whether the wrong was committed in behalf of and within the reasonable scope of the business of the partnership. If it was so committed, the partners are liable as joint tort feasors. * * * The principle upon which equity founds the rule that joint creditors must look to the joint estate, and individual creditors to the separate estate of partners, is that the joint creditors have extended credit on the faith of the firm's property and the individual creditors on the faith of the separate estates of the partners. This reasoning certainly does not obtain in a case like the present in which there was no contractual relation between the parties, and the act of the defendants was a tort pure and simple."

In re Peck, 206 N. Y., 55.

"A person may become a member of a voluntary unincorporated association and make himself liable to third parties upon contracts authorized by a vote of the association even though he did not vote to give such authority or did not attend the meeting."

Cheney v. *Goodwin*, 88 Maine, 567;
Bennett v. *Lathrop*, 71 Conn., 613;
Hodgson v. *Baldwin*, 65 Ill., 532;
Jenne v. *Matlack*, 41 S. W., 11;
Crawley v. *American Society of Equity*, 139 N. W., 734 (Wis.);
McKenney v. *Bowie*, 94 Me., 397;
Willcox v. *Arnold*, 162 Mass., 577;
Tyrrell v. *Washburn* 88 Mass., 466;

Bacon on Benefit Societies (1904), Sec. 120;
Niblack on Voluntary Societies (1888), Secs 98-100.

The reasons for applying the rule of *respondeat superior* to large unincorporated industrial associations and not permitting the members to escape responsibility for the conduct of said associations by professions of extraordinary neglect and ignorance of its affairs, are very emphatic and are the same reasons which have led to the legal principle that a man shall be holden for the uncommanded wrongs of his agent when acting in his behalf. The origin of the rule of *respondeat superior* is well stated in Pollock & Maitland's "History of English Law", Vol. 2, page 533, where, in discussing the statutes of Edward I on this point, the authors say:

> "To us, however, at this moment the chief interest of these statutes lies in their introduction of the phrase *respondeat superior*. In no case does this phrase point to an absolute liability of the superior for wrongs done by the inferior or even for those done in the course of his employment. In all cases it points to a merely subsidiary liability of the superior which can be enforced against him if it is proved or patent that the inferior cannot pay for his own misdeed. This indicates, as we believe, what has first and last been one of the main causes of employer's liability. Should we nowadays hold masters answerable for the uncommanded torts of their servants if normally servants are able to pay for the damage that they do? We do not answer the question, for no law except a fanciful law of Nature has ever been able to ignore the economic stratification of society."

The conditions surrounding the organization of a modern labor union call more eloquently for the application of this line of reasoning and this rule of liability than any other activity of life. The labor union leader is often a man of no financial standing and yet because he represents the power and financial backing of one hundred thousand workingmen is in a position to exercise power and authority out of all proportion to his own individual influence and standing and to inflict damages out of all proportion to his own ability to respond. Mr. Gompers, as president of the American Federation of Labor, can inflict damage commensurate with the power, influence and membership of the American Federation of Labor of which he is the chief executive head, and unless the injured party can resort to the members of this Federation who have vested Mr. Gompers with this authority and power, they are without redress. If the damages inflicted are commensurate with the influence and financial backing of the combined membership of this association, no adequate relief can be obtained unless the injured party can look beyond the titular head to the general membership. If a single corporation may be held responsible for the acts of ten thousand agents and an individual employer for the acts of several hundred agents—as is often the case—there would seem to be no reason why one hundred thousand members of a single labor union should not share among themselves the responsibility for the acts of their ten agents. If the capitalist must incorporate to limit this liability the labor union must do likewise. If a principal employs an agent at his peril and society holds him liable for the wrongs of that

agent because agents are usually unable to respond in damages, then society must likewise hold these vast associations of working men responsible because their officers are vested with the power to wreck trade, but are usually unable to respond in damages. The law can never tolerate that those who join these vast and powerful combinations can escape liability by pleading ignorance or private disapproval of acts done in the execution of the common purpose by the agencies they created. If innocent, they may seek contribution and indemnity for damages they have to pay.

Wooley v. *Batte*, 2 C. & P., 417;
Horbach v. *Elder*, 18 Pa., 33;
Vandiver v. *Pollak*, 19 L. R. A., 628;
9 Cyc., 805.

The defendants' theory would relieve the membership of the unions of all responsibility, if through negligence or stupidity the member remained ignorant of the officers' acts, although the officers were warranted in believing that they acted with the membership's approval. If reckless and inexcusable ignorance of the published activities of trade unions in pursuit of the usual trade union purposes may forge a defense for the members, the time has arrived when labor organizations will be conducted by acquiescence of its membership along the lines of greatest secrecy and concealment in order to keep from the members that knowledge of the union's affairs which would be a danger signal of a liability not otherwise incurred. Such a rule of law places a premium upon the member's inactivity and ignorance, encourages him to vest wide discretion-

ary powers in the officers without inquiring into their use, and bids him contribute money while remaining blind to the purposes for which it is spent.

If, on the other hand, the membership is held to reasonable responsibility for what the organization is doing when its activities are fully published for the benefit of the members, then every member will make a reasonable effort to acquaint himself with the work that is being done by his representatives in order to avoid the continuation in office of men who are doing wrong in their behalf. Bossism, graft, unfair politics, secret crime and irresponsibility to society are the fruits of the defendants' doctrine, while a democratic administration of union affairs by its conservative members, the election of law-abiding officers, an increase in general watchfulness and restraint over the officers by its better class of members, with a resulting decrease in crime and wrongdoing, would be the result of the principle of responsibility.

POINT IV.

The only acts of the defendants for which the plaintiffs may recover damages in this case are such acts as are set forth in the complaint and as were done by the defendants or their agents before the suit was commenced, and the plaintiffs are entitled to recover all damages which are the proximate and natural result of such acts, including such damages as may have continued or resulted therefrom after the suit was commenced by the plaintiffs, but cannot recover in this suit for any damages which are the result of the continuation of the alleged conspiracy after the suit was commenced or which are the result of the performance of any acts in furtherance of said conspiracy after the suit was commenced.

The head note is an extract from the charge of the Court which is made the basis of assignment of error 21 and should be read in connection with other portions of the charge that accompanied it. If the charge is correct, it disposes of assignment of error 12, which relates to a refusal to charge on the same question, and assignments of error 64 and 65 relating to the admission of evidence concerning damages subsequent to date of suit (Defts.' Brief, pp. 225-35).

The plaintiffs contend that the charge as given

succinctly states the settled law upon this subject; that they are not entitled to recover any damages due to acts subsequent to date of suit, but are entitled to recover all damages which are the continuing consequence of acts which took place prior to the commencement of the suit; that it was for the jury to say what portion of the damages which developed after the date of suit were the proximate result of acts prior to the date of suit, and therefore recoverable. They claim the right to recover *all* damages due to the acts upon which the suit is based, because no part of such damages can be recovered in a new suit. The plaintiffs insist that the right to recover future damages depends on the question of fact, whether they are due to the previous acts upon which the suit was based or to acts subsequent to the suit for which a new cause of action would lie. The defendants insist upon the arbitrary rule that if the wrongdoing continues, all continuing damages must be recovered in a subsequent suit even though they are not due to the continuance of the wrong.

The question is one of evidence and not of substantive law. We agree that the plaintiffs cannot recover for subsequent injuries but we disagree upon the manner of proving the amount of the injury originally inflicted, as the best proof of the amount of the injury is evidence of subquent developments showing the actual effects of the previous acts on the plaintiffs' business. The mere fact that the wrong may continue, does not change the rule except in cases where it is obvious that no damage would continue unless the wrong continued. In other cases the continuance of the wrong may make it difficult to deter-

mine what portion of the continuing loss was due to the continuing wrong, but the rule of law remains the same. As was well said by this Court in the case of Willcox vs. Plummer, 4 Peters, 172:

> "It is perfectly clear that the proof of actual damage may extend to facts that occur and grow out of the injury even up to the day of verdict. If so, it is clear the damage is not the cause of action."

We therefore say that the question is merely one of evidence and not substantive law; in other words, subsequent events are sometimes the best proof of the duration and extent of the original injury.

The test to be applied is not when the damages became *evident*, but whether they resulted from the acts upon which the suit is founded. In most of the cases cited by our opponents no perplexing question of fact arises, as the damage ends when the wrongful act ceases. In such cases of continuing wrongs, damages are properly limited to date of commencement of suit, because there are no future or subsequent damages and the continuance of loss is due solely to the continuance of the tort. Such is the case of a spite fence, for its maintenance causes fresh damage each day that it stands and all damage stops the day that it is removed. The Court will not presume, however, that all subsequent damages are due to subsequent wrongs, when such presumption is obviously contrary to fact.

In the case at bar the gravamen of the action is not the conspiracy, but each overt act in furtherance thereof, which causes damage. Van Horn vs. *Id.*, 52 N. J. L., 284. Nalle vs. Oyster,

230 U. S., 165. These separate acts for which the plaintiffs seek to recover occurred at different times in widely scattered points of the country and while most of them were completed acts, some of them produced loss which continued far into the future without any additional wrongful act. In many cases it would be beyond the power of the defendants to terminate the loss which they had originally set in motion by some overt act and a mere cessation of hostilities would certainly not have done so. In such instances the entire amount of the damages resulting from this overt act must be recovered in the original suit and not in a subsequent suit to recover continuing damages which flowed from the same act upon which the prior suit was based. Let us illustrate.

Plaintiffs' trade with Mr. A of New York is stopped in 1903, by an act of the defendants. The defendants continue their conspiracy in California, but pay no further attention to Mr. A or anyone else east of the Rocky Mountains. A makes a less satisfactory arrangement at a large initial expense for the purchase of hats from another manufacturer because the defendants will not allow him to deal with the plaintiffs, and once having made these new arrangements, decides that it is bad business to change back to the plaintiffs again, although defendants have left his town and he hears nothing further from them. In this way a good will and business may be permanently destroyed with one customer by a single disrupting act. Upon this state of facts and many other instances of a similar nature in different parts of the country, the plaintiffs bring suit in 1903, which first comes to trial in 1909, and seek to show through their witnesses that

part of their damages developed after the suit was commenced and that they were not the result of subsequent overt acts by the defendants, but of the original completed wrongful acts. The defendants contend that subsequent suits must be brought to recover this continuing loss, although in each case the loss would be due to the same tortious act upon which a previous recovery had already been made and it would be impossible to connect the loss with any new act of the defendants.

The case of *Phelps* v. *N. H. &c., R. R. Co.*, 43 Conn., 453, cited by defendants (p. 231, Defendants' Brief), is a good illustration of the distinction to be made. If, through failure of the railroad company to keep the cattle passes in repair, a cow was injured and suit brought on that account, it would no doubt be competent to show that the cow's injury increased or developed more seriously after suit was brought, but if this cow received a new injury after suit was brought, that would be the subject of a new cause of action. The extract from this case quoted by defendants says: "New actions for *new injuries* may constantly be brought", but does not say that new actions may be brought for *new damages*. As was said by this Court in *Wilcox* v. *Plummer* (supra): "Damage is not the cause of action". In the case of *Bradley* v. *Washington Packet Co.*, 34 U. S. (9 Peters), 107, cited by defendants (p. 232, Defts.' Brief) the action was to recover rent of a boat at $35 per diem, and this Court properly held that rent accruing after institution of suit could not be recovered. To allow recovery of subsequent accruals of rent would be analagous to allowing recovery in tort cases of damages caused by wrongful acts

committed after commencement of suit. The case of *Wicker* v. *Hoppock*, 73 U. S. (6 Wall.), 94, has no application. It says that in contracts of indemnity the party may recover "only to the extent of injury he has sustained up to the time of the institution of the suit." But this does not preclude using subsequent evidence to show the extent of that injury.

To show the absurdity of defendants' theory, we adopt two assumptions applicable to this case which that theory permits: 1. The conspiracy continues and fresh acts of aggression are committed in different parts of the country, (2) certain items of damage which develop after service of the writ are the proximate effect of acts prior to the suit upon which the suit is founded. To this state of facts—which is the state of facts in the case at bar—we will attempt to apply the defendants' theory.

a. If plaintiff brings a subsequent suit to recover continuing damages resulting from the same overt act, upon which he has already recovered part damages, he will be splitting his course of action, and met by that objection. No one can have more than one recovery for the same wrongful act, even though he discovers new evidence of additional damage from that act. All the damage, past, present and future, must be included in the original suit, because this is a case covered by the rule cited by defendants and expounded by Lord Mansfield (Robinson vs. Bland, 2 Burr. 1077), where "No satisfaction can be had by a new suit."

b. If plaintiffs bring new suit based on fresh wrongs and attempt to recover the continuing damages which resulted from former wrongs,

they will be met by the objection that these damages are not the result of the new overt acts upon which the suit is founded; that the suit is based on one cause of action and the damages are due to an entirely different cause of action. An action based on the *original* nuisance and one based on the continuance of the nuisance are separate and distinct causes of action (McConnel v. Kibbe, 29 Ill., 483), and each may recover all damages traceable to its cause of action. Where it is contrary to the fact, the Court will not presume that the continuing damage is due to subsequent wrongs merely because they are apparently contemporaneous.

c. Under the defendants' contention, repeated actions might be brought against the wrongdoer for the same cause of action during a long course of years to recover the damages which accrued from time to time from the same wrong, but the law is well settled to the contrary by many cases and all the leading text-books on damages, and the only perplexing question is one of fact in separating that part of the damages which are due to acts upon which the suit was founded from the part of the damages which is due to subsequent acts and is not recoverable. The practical difficulty is no greater, however, than in any other case where a portion of a man's damages may be due to his own mistakes or other non-recoverable causes and a portion to the acts of a wrongdoer. It is the old problem of apportioning a loss or injury to the various causes which may have contributed to it and there is no error if this perplexing question of fact is properly left to the jury with instructions which clearly set forth the legal principles.

they are the natural and necessary result of the act complained of and while they do not of themselves constitute a new cause of action."

Joseph Schlitz Brewing Co. v. *Compton*, 18 L. R. A., 390.

"The right to recover prospective as well as existing damages in an action depends usually upon the answer to the test question whether the whole injury results from the original tortious act or from the wrongful continuance of the state of facts produced by these acts."

Ridley v. *Seaboard R. R. Co.*, 32 L. R. A., 708.

"The rule as to the measure of damages permits the plaintiff up to the time of trial to show the condition of the injured animal merely as a means of ascertaining the result of the injury inflicted, so as to better enable the jury to fix the damages at the time and place of delivery. If the cows did subsequently abort, this is proof only of the extent of the injury inflicted as much so as if they had subsequently died from the effect of the collision. The only known limit to the injury up to the trial is whether or not the subsequent development in the condition of the animals is traceable directly to the injury inflicted by the carrier."

N. Y., etc., v. *Estill*, 147 U. S., 591.

"It frequently happens that the consequences of an act are not at once apparent, and that a litigant on the day of trial is able to show that certain damages have been sustained as the proximate result of a wrongful or a negligent act which could not have been proven if the trial had occurred at an earlier day; but in such cases no court has ever as yet intimated that the right of recovery was limited to such damages as became manifest

d. The defendants fall into the same error in applying the rule of damages to contract cases. If there is a breach of a single covenant of a contract, which otherwise remains in force, the plaintiff is entitled to recover all the damages which flow from that breach, and to prove those damages by showing their development and continuance after suit was commenced.

e. The contention that damages subsequent to suit cannot be recovered, even though based on acts upon which the suit is founded, is arbitrary and unreasonable. The plaintiffs are entitled to all the damages suffered from the unlawful acts whether it be a contract or tort case, and the date of the commencement of the suit has no bearing upon the question as to what is the most reliable evidence of those damages.

> "When a cause of action accrues, there is a right as of that date to all the subsequent damages which will ever ensue. They are recoverable in one action if they can be proved and only one can be maintained. It may be brought at any time after the accrual of the right. The question is a practical and legal one in each case, whether the cause of action is of such a nature that the injurious consequences of the wrong complained of can reach into the future, or whether any subsequent damages will be owing to a continuous fault which may be the foundation of a new action."
>
> *Occidental Consolidated Mining Co.* v. *Comstock Tunnel Co.*, 125 Fed., 244.

"The rule subsequently prevailing in such cases is that damages accruing after the commencement of the suit may be recovered if

immediately after the wrongful act was committed. On the contrary, the rule is that a plaintiff is entitled to recover compensation for such damages as he can establish on the day of the trial provided that they were the proximate result of the alleged wrongful or tortious acts."

Jones v. *Allen*, 85 Fed., 527.

"It is not essential, however, that all the injurious effects of the act which constitutes the cause of action should have been developed and suffered before suit; it is immaterial to the right to recover for them when the effects manifest themselves with reference to the time of bringing the suit. But it is practically material to the plaintiff that the effects be so manifest before and at the time of the trial as to be susceptible of proof. The actual effects down to the time of the trial are provable and whether those which may ensue later may be taken into account will depend on whether they are imminent and sufficiently certain. Interest which is the accessory of the principal does not stop at the commencement of the action, but may always be computed down to the verdict. *But whether continuing damages may be computed after the commencement of the suit will depend on whether they proceed from the act complained of in that suit as the cause of action or from some later act constituting a fresh cause of action.*"

Section 113, Vol. 1, Sutherland;
Park & Sons v. *Hubbard*, 198 N. Y., 136.

In an Illinois case, suit was brought for damages for flowage or water on plaintiff's property. It appeared that the water was discharged by de-

fendant before commencement of suit and froze, but that after service of the writ it melted and did further damage. The Court allowed the recovery of the subsequent damage and said:

> "In this case the injury sustained by appellee between the commencement of the suit and the trial was not from any wrongful act done by appellant during that time, but followed from acts done before the suit commenced, and was properly recovered for in this action."
>
> *C. & N. W. Ry. Co.* vs. *Hoag*, 90 Ill., 347.

> "The plaintiff could therefore properly recover for them up to the time of the verdict; for the rule is that the proof of damage may extend to all matters up to that period which are the natural result of the previous injury (2 Greenl. Ev., Sec. 268)."
>
> *Hicks* v. *Herring*, 17 Cal., 569.

In a case where a man's trade was injured by libel the same question arose and the Court held:

> "There can be but one assessment of damages for the cause of action on which this suit is based, and all the damages, those accruing after as well as before the bringing of the action must be included in it. Evidence as to damages after the date of the writ was, therefore, rightly admitted."
>
> *Weston* v. *Barnicoat*, 175 Mass., 456.

> "It is well settled that though damages accrue after the institution of the suit, they may be recovered, provided they are the natural and proximate consequences of the act

complained of, and do not themselves constitute a new cause of action."

Cooper v. *Stillers*, 30 App. D. C., 567, 23 Cyc., 446-7.

"The plaintiff can in no event recover for any cause of action not included in his writ and on this ground he can recover for no damage not sustained when his action is commenced. For any future damage he may recover in an action based upon the continuance of the injurious cause"; * * * "If they are the result and consequence of the wrongful acts complained of, they are to be recovered in that action. If they result not from the wrongful acts, but from the wrongful continuance of the state of facts produced by those acts they form the basis of a new action."

Troy vs. *Cheshire Railroad Co.*, 23 N. H., 101;
Powers vs. *The City of Council Bluffs*, 45 Iowa, 652;
National Copper Co. v. *Minnesota Mining Co.*, 57 Mich., 83;
Executors of Lord vs. *Carbon Mfg. Co.*, 6 Atl., 812;
Joyce on Damages, Vol. I, §250;
Sedgwick on Damages, 9th Ed., Vol. I, Sec. 869.

It was proper to leave to the jury the question of determining what portion of the plaintiffs' loss was due to wrongful acts of the defendants prior to the date of suit, and what portion was due to a continuation of their wrongful acts after the suit was commenced, or what proportion was due to entirely other causes for which the plain-

tiffs were not in any way accountable. A separation of damages resulting from different causes is one of the familiar and well recognized functions of the jury and the leading case upon this subject is Jenkins v. Penn. R. R. Co., 57 L. R. A., 309 (N. J.). In that case, Justice Pitney refers to an Illinois decision where certain damages were caused to plaintiff's property because of the overflow of defendant's tank and where it also appeared that part of the water which caused the damage came from another source for which the defendants were not responsible. In that Illinois case the defendants had asked the Court to charge as follows:

> "If the jury cannot from the evidence determine what part or portion, if any, of damages was occasioned by the water escaping from the tank, then in no event can they find for the plaintiff more than nominal damages on account of damages he may have suffered from the flowing of the water."

The Illinois report sustained the Judge's refusal to so charge, and Justice Pitney in the Jenkins case makes this Illinois decision the basis or the text of his remarks and says:

> "The court of review held this proposed instruction objectionable as liable to mislead the jury to understand that unless they could determine to a certainty the extent of the damages from each of these sources, they should find only nominal damages for the plaintiff, the Court declaring that if the jury could not separate and distinguish between the several amounts of the damages caused by the water from the tank and the surface water respectively they should have been left at liberty to estimate as best they might

from the evidence how much of the whole damage was occasioned by the water from the tank."

Justice Pitney then goes on to say:

"To say that the plaintiff must be denied a substantial recovery because of the impossibility of distinguishing between the consequences that were lawfully originated and those that were unlawfully imposed upon him is to say that in such circumstances the best approximation to justice attainable in a court of law is to require the injured party to bear the entire burden of loss. From the standpoint of natural justice, it would be better to permit the wrongdoer to bear the whole. But the rule above indicated does equal justice to both so far as the nature of the case permits."

See, also,

C. & N. W. Ry. Co. v. *Hoag*, 90 Ill., 347;

Post v. *Hartford Street Ry. Co.*, 72 Conn., 362.

POINT V.

It was proper to cross-examine the individual defendants as to their conduct after the service of the writ; and whether they continued paying dues as members and re-elected the same officers and made no investigation or protest on account of the matters set forth in the Bill of Complaint.

Our head-note covers assignments of error 31-33. (Defts.' Brief, pp. 168-74.)

All of this testimony was admitted solely as cross-examination (fols. 6785, 4981, 5024-28, 5061, 5978, 6024-26, 6099). That is admitted by Defendants' Brief (p. 168).

The defendants waived any right to object to such testimony because their counsel was the first to introduce evidence about the boycott and conspiracy subsequent to date of trial. In the course of the trial, Mr. Frank Morrison, Secretary of the American Federation of Labor, was first produced by the defendants as a witness for the plaintiffs so that his deposition could not be used and the defendants thereupon asked the privilege of examining him as their witness on other matters in advance of the defendants' presentation in order thereby to avoid recalling him when the time for the presentation of the defendants' case arose. In this advance presentation of the defendants' case, Mr. Morrison was asked by their attorney whether or not the American Federation of Labor had ever published the name of D. E.

Loewe & Co. "on any paper or boycott list prior to the beginning of this suit and Mr. Morrison answered 'no'" (fol. 712). Defendants' counsel then asked him whether there had ever been such publication *since the commencement of the suit* and the witness again answered "no" (fol. 712). Neither was the examination of the individual defendants by defendants' counsel limited to matters prior to date of suit, but related in part to subsequent matters, thereby specifically opening the door for cross-examination along that line (fols. 4878-80, 4867-68, 4874, 5001, 5071-72, 5433).

Our contention is two-fold: (1) That the evidence of the subsequent conduct of the defendants would have been admissible if offered as part of the plaintiffs' own case; (2) that the evidence of the subsequent conduct of the defendants was admissible on cross-examination because it bore upon the credibility and reliability of their testimony in chief.

I.

The sole issue raised by the defendants in this connection was whether they knew of the unlawful conduct of their union and its officers and intended to have them pursue it. On all questions of knowledge and intent it is a well settled rule of law that similar acts prior to the act charged or subsequent to the act charged, are admissible. The case of Exchange Bank vs. Moss, 149 Fed., 340, decided by the Circuit Court of Appeals for the Eighth Circuit, in which the opinion was rendered by Circuit Judge Hook, is much in point and says:

"Where the petition in an action to recover money alleged to have been obtained from plaintiff by means of a conspiracy between the defendant bank and others alleged that such conspiracy covered an extended period of time both before and after the transaction in suit and was organized for the purpose of swindling all strangers who could be induced to enter into similar transactions, evidence of acts of the cashier of defendant bank in respect to similar transactions while conducting the business of the bank, or declarations made by him to other persons similarly defrauded tending to show the bank's complicity, *whether such acts and declarations were before or after the transaction in issue*, are admissible to establish the guilty intent and motive of the bank in the transaction involved in the case on trial."

See also *Wood* v. *U. S.*, 16 Pet., 342, 10 L. Ed., 987.

The same rule is applicable to cases of false pretenses.

Wigmore on Evidence, Sec. 320, Sub-div. 2;

and in the case of stolen goods,

Wigmore, Section 325;

and in the case of fraudulent transfers,

Wigmore, Section 333;

and in the case of forgery,

Wigmore, Section 316;

and in the case of attempt at homicide,

Wigmore, Section 363;

and in assault cases,

Wigmore, Section 364.

> "The foregoing principles are equally as applicable to civil cases as to criminal cases and to the use of other torts, sales, forgeries, or the like, in evidencing similar issues in civil cases. The peculiarity of the question involved is merely whether and under what conditions other similar acts are receivable to show knowledge, intent or design as to the acts charged."

Wigmore, Section 370.

> "Where the question relates to the tendency of certain testimony to throw light upon a particular fact or to explain the conduct of a particular person, there is a certain discretion on the part of the trial Judge which a court of errors will not interfere with unless it manifestly appear that the testimony has no legitimate bearing upon the questions at issue and is calculated to prejudice the accused in the minds of the jurors."

Moore v. *U. S.*, 150 U. S., 60; 37 L. Ed., 996.

Evidence of this character is also admissible as tending to show the authority of the union officers as agents for the defendants on the theory that *subsequent* conduct does, in cases like this, tend to throw light upon *previous* authority.

> "The authority of an agent may be implied from his previous employment in similar acts and from subsequent acquiescence."

Fisher v. *Campbell*, 9 Porter (Ala.), 215.

"Previous authority might be inferred from acquiescence on the part of appellant and the receipt by it of the money paid by appellee."

Columbia Land Co. v. *Tinsley,* 60 S. W., 10.

"Where such undisclosed principal has been informed of the act of such agent in collecting such note and does not immediately repudiate such acts but acquiesces in it for nearly three years, such fact tends to show that the act of such agent was lawfully authorized."

Cheshire Provident Institution v. *Vandergrift,* 95 N. W., 615.

"The impression derived from all these facts is that Treat could not have been ignorant of the transactions carried on for his benefit and in his name. He must have known of them and had they been unauthorized there would have been some evidence of renunciation or dissatisfaction on his part."

Rice v. *Ege,* 42 Fed., 663.

"Subsequent conduct may in many cases be given in evidence to affect or to show the character of prior acts or intentions."

Elwell v. *Russell,* 71 Conn., 465; 1 Greenleaf on Evidence, §53.

The doctrine in these cases is applicable to the case at bar. Many of the defendants swore that they never knew the organization, of which they were members and which they supported, was engaged in boycotting or that any of its officers were guilty of wrong-doing. If they were truthful in their statements the knowledge brought home to

them by the commencement of the suit, that their union, their agents and their money was being used for these unlawful purposes, would have created surprise, consternation, protest and attempted reform. If acting in good faith they would have attempted to prevent a repetition or continuance of the wrong-doing by either withdrawing from the organization, refusing to contribute to the unlawful acts, protesting to its officers, endeavoring to prevent the re-election of the same officers at the subsequent convention of 1907, or by exercising their constitutional rights as members to bring about a rescission and veto of all of this boycotting which had been ratified, authorized and confirmed by the respective conventions. If the defendants were innocent there would have been an outburst of fury at the officers who betrayed them instead of supine acquiescence in the re-election of these officers. Proof of acquiescense therefore tends to prove previous authority, knowledge and intent.

The evidence was also admissible because it tended to prove conspiracy subsequent to the date of suit, and such proof in connection with the proof that had already been offered as to acts prior to the date of suit was clearly admissible under the authorities.

The question was raised before Judge Ward in the action of Buckeye Powder Co. vs. Hazard Powder Co., 205 Fed., 827, in a civil suit for damages due to conspiracy where it was attempted to introduce a certain article in evidence and the defendants objected "that the article in question was published long after the plaintiff's cause of action arose and cannot be made a ground for recovering damages." Judge Ward held:

> "The alleged conspiracy being a continuous transaction, the conduct of the alleged conspirators after September 19, 1908, when the plaintiff's business is said to have been destroyed may throw light upon the question whether a combination or conspiracy did exist before that date."

See, also,

Reg vs. *Stenson*, 12 Cox's Criminal Cases, 111-118.

> "The prior or the subsequent existence of such a fact is always evidential to show its existence at a time in issue upon the general experience that such facts involve a human attitude more or less continuous and permanent."

Wigmore on Evidence, Sec. 382.

The evidence that all the defendants continued to support the organization and re-elect the same officers after knowledge of the wrongdoing came to their attention by the commencement of the suit, showed their participation in the alleged acts at that time and tended to show their participation before that time.

> "There was certainly evidence tending to show that the defendant Hedderly became aware of the fraudulent character of the business in which his associates were engaged in obtaining title to the public lands of the United States and he did not withdraw from that business or repudiate their acts. This alone was sufficient to justify the jury in finding that he was a member of the conspiracy."

Hedderly v. *U. S.* 193 Fed., 571.

"If the intent, motive, knowledge or design be one of the elements of the crime charged, and especially if it is claimed that the crime was committed in accordance with a system, plan, or scheme, evidence of other like conduct by the defendant at or near the time charged is admissible. *Brown* v. *United States*, 142 Fed., 1, 73, C. C. A., 187. *Dillard* v. *United States*, 741 Fed., 303, 72 C. C. A., 451; *Ex parte Glaser*, 176 Fed., 702, 100, C. C. A., 254; *Thompson* v. *United States*, 144 Fed., 14, 75, C. C. A., 172, 7 Ann. Cas., 62.

Schultz v. *U. S.*, 200 Fed., 234;
Worden vs. U. S., 204 Fed., 1.

A conspiracy is a continuous act, and as long as it is in existence, evidence of the acts and declarations of each member thereof is binding on each member thereof whether such acts took place prior or subsequent to the date of the suit.

U. S. v. *Kissel*, 218 U. S., 601;
Brown v. *U. S.*, 150 U. S., 93;
Lawrence v. *State*, 103 Md., 17.

THE EVIDENCE WAS CLEARLY ADMISSIBLE AS CROSS-EXAMINATION.

The reasons stated for the general admissibility of this testimony apply with equal force to cross-examination. Principals are being sued for acts which their agents have been publicly doing for many years in furtherance of their principals' interests and for the pecuniary benefit of the principals. These principals taking the witness stand as parties in their own behalf deny that they knew of the wrongful acts of their agents or ever authorized them, although it appears that all reasonable efforts were made by the agents to keep

their principals fully informed. On cross-examination they are asked whether they discharged these agents, or issued them any instructions, or took any steps to prevent a continuance of the wrongdoing by which they profited, when they were informed of it by the commencement of the suit. The willingness after the date of suit to accept the fruits of wrongdoing and to continue agents in their employ for illegal purposes was a proper line of inquiry on cross-examination of parties who testified that down to the day of suit they never knowingly employed servants for improper purposes or knowingly accepted the fruits of wrongdoing.

The defendants contend that such evidence tended to "*corroborate*" the testimony in chief that they were innocent, for otherwise they would not have continued members (Defts.' Brief, p. 169). Here is an admission that it does bear on the examination in chief, and if the jury accepted this inference urged by defendants, then the evidence helped the defendants rather than prejudicing them. They also seek to defend on the ground that knowledge of the charges made in the complaint was immaterial because the law was in doubt until decided by this Court in 1908 (Defts.' Brief, p. 171). Have they forgotten the axiom that ignorance of law is no defense?

Furthermore, the ruling on cross-examination for the purpose of affecting the truthfulness or accuracy of a witness's testimony, is entirely within the discretion of the Trial Judge and the scope of such cross-examination is broader with parties than it is with ordinary witnesses.

Storm v. *U. S.*, 94 U. S., 76.

"So far as the cross-examination of a witness relates either to facts in issue or relevant facts it may be pursued by counsel as matter of right, but when its object is to ascertain the accuracy or credibility of a witness, its method and duration are subject to the discretion of the trial judge and, unless abused, its exercise is not the subject of review."

Langley v. *Wadsworth,* 99 N. Y., 63;
40 Cyc., 2506, 2511;
Gorman v. *Fitts,* 80 Conn., 531;
People v. *Braun,* 158 N. Y., 558;
People v. *Meadows,* 136 App. Div., 226; aff'd 199 N. Y., 1.

"A party has a right upon cross-examination to draw out anything which would tend to contradict, weaken, modify or explain the evidence given by the witness on his direct examination, or any inference that may result from it tending to support in any degree the opposite side of the case."

40 Cyc., 2482; 2507.

"It is proper cross-examination to interrogate a witness as to facts or circumstances inconsistent with his testimony or conduct on his part, at variance with what would be natural or probable if his statements on his direct examination were true."

40 Cyc., 2484;
State v. *Griswold,* 67 Conn., 290 (33 L. R. A., 227).

"A witness who has testified to certain facts, circumstances or occurrences, may be interrogated on cross-examination as to other

similar facts, circumstances or occurrences, where such a line of examination tends to elucidate or discredit his testimony."

40 Cyc., 2486;
Harris v. *Rosenberg*, 43 Conn., 227;
So. Bell Telephone Co. v. *Watts*, 66 Fed., 460.

"Considerable latitude is allowed in the cross-examination of a party who testifies in his own behalf and in such case the examination may take a wider range than would be permissible if the witness were not a party."

40 Cyc., 2508;
Winn vs. Itzel, 125 Wis., 19;
Taggart v. *Bosch*, 48 Pac., 1092;
Jansson v. *Larsson*, 30 App. Cas., D. C., 203.

"The defendant by testifying to his own his own behalf and in such case the examina- permissible if the witness were not a party."

People v. *Meadows*, 136 App. Div., 226.

POINT VI.

It was proper to permit salesmen of the plaintiffs and salesmen of jobbers who were distributing the plaintiffs' hats to testify as to the reasons given by customers from whom they were soliciting orders for their refusal to purchase plaintiffs' hats.

Our head note covers assignments of error 53-56 and 66-71, all of which relate to the admission of testimony of salesmen of plaintiffs or jobbers distributing the plaintiffs' hats as to the reasons given them by customers for their refusal to place further orders. The defendants were given their choice as to whether these statements should be given in the form of brief conclusions or by a strict narration of the conversation (fols. 4118-23). Our contention is that statements made by a customer explaining his refusal to purchase hats which he has customarily purchased are admissible, if given in the ordinary course of business as an explanation for his refusal when being solicited for orders. The same rule applies to statements made by workmen at the time they are quitting work in explanation of their quitting. Such evidence is admissible under well established principles as part of the *res gestae* to explain an equivocal act such as the discontinuance of patronage or employment and to prove the fear of the plaintiffs' customers which the defendants intentionally produced.

Elmer v. *Fessenden*, 151 Mass., 361; opinion by Justice Holmes;

Hine v. *N. Y. El. R. R. Co.*, 149 N. Y., 154;
Casey v. *Typographical Union*, 45 Fed., 135;
My Maryland Lodge v. *Adt.*, 100 Md., 238.
Wigmore on Evidence, Sec. 1729, Subdiv., 2;
Hadley v. *Carter*, 8 N. H., 42;
Steketee v. *Kimm*, 48 Mich., 322;
Webb v. *Drake*, 52 La. Ann., 290.
Weston v. *Barnicoat*, 175 Mass., 456.
Bausbach v. *Reiff*, 91 Atl., 224 (Pa.).

ASSIGNMENT 53-56.

Assignment 53 is based on an exception to the introduction in evidence of a letter (fols. 2063-67) from Thomas D. Stokes, one of the plaintiffs' customers, who was boycotted because of his persistence in purchasing the goods of D. E. Loewe & Co. after being warned by the defendants not to do so. The letter was written at the request of certain labor committees who called on Mr. Stokes (fols. 2061; 2072-73), and these labor committees were acting directly under the instructions of defendants (fols. 2026-32). It is introduced through the testimony of Stokes himself who testified that he wrote said letter to the plaintiffs at the request of the defendants (fol. 2073). From a reading of Mr. Stokes' testimony, it will be seen that there is nothing in the letter but what was testified to directly by Mr. Stokes concerning his conversation with the defendants or other union officers acting in their behalf. Any reference in the letter to what the defendant unions were doing is covered by other proof in the testimony of Mr. Stokes and

also in other parts of the record (fols. 2126-32). No grounds are stated by the defendants for their objection and exception to the introduction of the letter (fol. 2063) and the letter was clearly admissible on the ground stated in the cases cited by us on the general principle.

Assignment 56 relates to a letter of the same character (fols. 2205-6), as assignment 53 and its disposition will be governed by exactly the same rules. Direct testimony of the same facts was given (fols. 2178-93).

Assignment 55 also relates to the admission in evidence of a letter of Mr. Stokes (fols. 2099-2103) and no grounds are given for the objection and exception of the defendants (fols. 2097-98). The Court in admitting this letter, explains its theory as to the admission of all letters of this kind (fols. 2097-98). The letter recites the attempts to boycott Stokes for dealing with the plaintiffs and all of these facts were proved by independent evidence (fols. 2026-32). Mr. Stokes was asked in his oral testimony if this letter, which contained his explanation as to why he discontinued business with D. E. Loewe & Co., correctly represented his state of mind at the time (fol. 2096) and if the facts stated therein were true, so that it amounted to nothing more than oral testimony on his part as to why he discontinued business with D. E. Loewe & Co. Direct testimony by the plaintiffs' customers who had been compelled by boycott to discontinue business relations with the plaintiffs, is certainly admissible, and this letter served only that purpose. The letter was also admissible on the ground stated in our head note. (Bausbach v. Reiff, 91 Atl., 224; Pa.)

Assignment 54 refers to a statement in the deposition of Stokes wherein he testified that he was told by his city salesmen that it was impossible to sell their goods. The remarks of the Court in admitting the evidence indicated that it was regarded as a part of the *res gestae* (fols. 2079-82). The evidence was not given as proof of the fact that it was impossible to sell the goods but as an explanation of Stokes' state of mind as to why he stopped dealing with the plaintiffs (fol. 2087). This state of mind, which was intentionally brought about by the defendants through their boycotting activities (fols. 2026-32) was certainly admissible and was only offered in connection with direct evidence concerning the boycott of this customer. It comes under the head of that line of cases already cited by us in which evidence as to why a man quits work or discontinues patronage is admissible. Statements made to this customer by his own salesmen in the ordinary course of business concerning the difficulty of disposing of his hats was one of the principal factors in inducing him to discontinue business with the plaintiffs, as set forth in his testimony and in his letter to the plaintiffs (fols. 2095-2102).

ASSIGNMENTS OF ERROR 66-71.

Assignment 66—A salesman of Triest & Co. hat jobbers in San Francisco—and the foremost customers of plaintiffs—was permitted to testify, over the objection and exception of the defendants, what W. Smith, a retailer of Oakland, California, said to him when he attempted to sell him hats. Smith was a regular customer of Triest & Co. and over 70% of his purchases were plaintiffs'

hats, which he bought through Triest & Co. In the course of their operations the defendants established a systematic and extensive boycott on the Pacific coast of all retailers who purchased of Triest & Co. because they dealt with the plaintiffs. Boycotting agents visited and circularized these retailers from Seattle to Los Angeles, and publicity was added by the use of boycotting press notices, all for the purpose of terrifying the retailers so that they would discontinue dealing with Triest & Co. Hundreds of circulars were issued and many of the more fearless retailers were actively boycotted in their turn. In the midst of these activities a salesman for Triest & Co. called on one of the retailers against whom this propaganda was aimed, and in the ordinary course of business attempts to sell him plaintiffs' hats as heretofore. The retailer declines to purchase and explains at the time that the reason for his refusal is his fear of the boycott (fol. 2573). It is now contended that this proof of a condition which the defendants intentionally sought to establish, is improper, but we submit that the evidence is within the rule of the authorities cited by us. If the statement is spontaneously made in the ordinary course of business to a salesman who is soliciting orders, in explanation of a refusal to buy, it is clearly admissible. The Court made it clear to the jury that the evidence was only admitted with this limitation (fol. 2581), and it was only offered for that purpose (fol. 2571). Smith himself testified that he stopped buying on account of the boycott (fols. 3101-2; 3116).

Assignment 67 also relates to a statement made by one of the retailers who is a customer of Triest & Co., as to why they could not do business with

Triest & Co. (fol. 2580), and the retailer himself testified to the same general reasons (fol. 3141). The purpose of this evidence and of all evidence of this character is clearly set forth by counsel for the plaintiffs at the time of offering it, as follows:

> "All of this evidence which we are offering is offered with the single purpose of showing the state of the customer's mind and explaining his act of refusing to do business with us" (fol. 2575).

The Court instructed the jury on this point at the time the evidence was introduced (fol. 2581).

Assignments 68-71 are each of the same character to be governed by the same rules, but in some instances the retailers did not testify.

POINT VII.

Extracts from the Journal of the United Hatters and the Convention proceedings of the United Hatters were properly admitted in evidence.

Our head note covers assignments of error 48 and 49 and their untenability seems too obvious for discussion. This Journal of the United Hatters was the official journal of the defendants' union (fol. 18), containing full accounts of official matters and reports of the boycotting operations of the organization (fols. 1407-9; 183). It was authorized by the convention of the United Hatters, supported by the dues of the members (fols. 7388-7400), edited by the president, and distribu-

ted among the members in the various factories where they worked in numbers equal to about 65% of the membership (p. 7, *supra*). The men who took most active part in the boycotting took most active part in the publication of the Journal, and everything published in it in connection with the boycotting was an act or declaration in furtherance of the combination, and binding on all members of the combination.

W. H. Clune v. *U. S.*, 159 U. S., 590; 40 L. ed., 269;
Conn. Mutual Life Ins. Co., v. *Hillmon*, 188 U. S., 218.

If any defendant was not a party to the conspiracy it was not binding on him, but this did not affect its admissibility to prove the conspiracy as against all others. Upon this point the judge's charge was full and complete (fols. 1664-1681).

The convention proceedings constituted the fundamental law of the United Hatters, embodying all that had taken place at the conventions which were composed of delegates elected by referendum vote from the entire membership of the United Hatters. These conventions, at which some defendants were always present, ratified, authorized and approved the various boycotts that were being conducted from time to time and unanimously re-elected the various officers of the United Hatters after hearing a full report of their boycotting activities. The proceedings were printed in pamphlet form and circulated among the membership in the same manner that the Journal was circualted. Everything said or done at the convention in connection with boycotts and everything published in these proceedings in connection

therewith were acts or declarations in furtherance of the conspiracy, binding on all the conspirators. They proved the scope and character of the combination through its own official publications. These convention proceedings and the Journal of the United Hatters were, therefore, admissible and binding upon every member of the combination and their admissibility is not affected by the fact that some of the defendants might not have been members of the combination, since the Court left the jury to determine the question as to which of the defendants were parties to the conspiracy.

This evidence was further admissible for the purpose of showing that the individual defendants working in the factories where these publications were distributed had knowledge of the boycotting. If the Court properly charged the jury that defendants were liable if they knew what their officers were doing, then all publications from which they might readily obtain information were admissible even though not read, because they bear upon the question as to whether the members knew of the wrongdoing and also upon the question whether the officers were warranted in believing that they were acting with the members' approval. Furthermore, some defendants testified that they knew of the contents of the Journal (fols. 7153-61) and it is admitted that ten defendants were chargeable with knowledge of their contents (fols. 7402-4; 7310-12; 6899-6900; 7200; 7319; 301; Defts.' Brief, p. 194).

POINT VIII.

Extracts from the "American Federationist" and the convention proceedings of the American Federation of Labor relative to boycotts by that Federation, were properly admitted in evidence.

Our head note covers assignments of error 34 to 42 inclusive and 44 to 47 inclusive. Extracts from the Federationist should be controlled by the same rules as extracts from the Hatters' Journals.

The American Federation of Labor is composed of the aggregate membership of various affiliated unions, including the defendants, who, like all other members of the United Hatters of North America, are members of this Federation. Immediately after affiliation and ever since, the United Hatters have actively employed the boycotting machinery of the Federation to carry out its industrial fights in the hatting trade, including the fights against Berg, Roelofs and Loewe. The conduct of these fights by the defendants and their employment of the Federation boycotting machinery for that purpose, are expressly made a part of the issues in the complaint, and it was the plaintiffs' duty to offer proof thereof. The best evidence of these activities were extracts relating thereto from the Convention Proceedings of the American Federation of Labor, at which some defendants were present as representatives of the United Hatters. These Convention Proceedings and the resolutions adopted at them, formed the fundamental law of the American Federation of

Labor and were binding upon all of the members of the affiliated unions who were represented therein. At these conventions, the "American Federationist" was made the official magazine and mouthpiece of the Federation (fols. 1016-26; 1339-48; 1356), and it thereby became the mouthpiece of all of the members of all the affiliated unions whose dues and assessments furnished its sole support. At each convention, the character of this "American Federationist" was reported upon and it was agreed that it should only assert such policies as all agreed upon. It is sent to every affiliated union (fol. 1347).

There can be no doubt whatsoever that the American Federation of Labor and the United Hatters of North America and the officers thereof, have been engaged in a general combination and conspiracy to restrain interstate trade in non-union hats, and that therefore the acts and declarations of each and every one of the confederates in furtherance of the combination, including the resolutions at the official conventions and all relevant extracts from the "American Federationist," are binding upon every member of that combination, and are proper proof of the combination's existence. Competent proof of the conspiracy would not be made incompetent by the fact that there were defendants who were not shown to be members of the combination since it was left to the jury to determine which of these defendants were members of the combination.

Moreover, as to assignments of error 39 and 40, the record shows that the witnesses Scully and Bailey, who were under examination when the several resolutions mentioned were identified and admitted, were *defendants* in the case, and were

the persons who, respectively, offered the same in the conventions of the A. F. of L. of 1899 and 1901, and that the only objection to their admission was stated to be (fols. 41 and 241) that they "no way referred to the plaintiffs in this case" and (fol. 130) that "the same are *irrelevant and immaterial*, and if admissible at any stage of the testimony, not admissible until after evidence offered *tending to prove* the specific conspiracy set forth in paragraph 20, and this objection may be considered as taken and applied to all testimony relating to F. Berg & Co. and H. H. Roelofs & Co."

The same is true of assignments 48 and 49, as to the admission of the proceedings of the Hatters' convention and of the Journals (fol. 130). And the record also shows that each of the defendants, in his separate answer, expressly admitted the publication of the Journals by the directors of the United Hatters. And that the defendants only interposed a "general objection" to the *extracts* read from the Journals. At the time of the admission of the volumes and of the extracts read therefrom, no objection was made based on their inadmissibility as to any particular defendant or class of defendants, nor throughout the trial thereafter was any request made for such a limitation.

And as to assignments of error 42, 45, 46, 47, the record shows (fols. 575-584 and fol. 587) that no objection whatever was made to the admission of the volumes of the Federationist, and of the convention proceedings, but on the contrary, the defendants urged their admission, and the record shows that no objection was made as to their ad-

missibility as to any particular defendant or class of defendants, as is stated in said assignments of error. And the defendants throughout the trial availed themselves of all of said documents, and freely read and quoted therefrom in their own behalf.

POINT IX.

Extracts from the daily newspapers of Danbury and Norwalk relative to the boycotting operations of the United Hatters, were properly admitted in evidence.

Our head note covers assignments of error 24 to 30 inclusive (Defts.' Brief, pp. 178-93). The evidence covered by the 27th assignment was first brought into the case by the defendants (fols. 2261-64). These extracts relative to boycotting were in substance a repetition of the same subject matter which had been theretofore proved by direct evidence in other ways, so that even if the newspaper evidence was hearsay, the same facts were fully and properly established by direct evidence and the error would be harmless.

Glaspie v. *Keator*, 56 Fed., 203;
People v. *O'Bryan*, 130 Pac., 1042 (Cal.).

"No judgment should be reversed in a court of error when it is clear that the error could not have prejudiced and did not prejudice the rights of the party against whom the ruling was made."

Lancaster v. *Collins*, 115 U. S., 222.

The evidence was offered solely for the purpose of establishing the fact that the defendants must have had knowledge of facts which were so generally published and promulgated in their respective towns. The Danbury newspaper from which these extracts were introduced was the only daily newspaper in the towns of Bethel and Danbury and had a circulation of 6,500 (fol. 2256) in a population of 20,000 people (fols. 2257-58). The "Norwalk Hour" and the "South Norwalk Evening Sentinel" were the only two daily papers in the towns of Norwalk and South Norwalk where the balance of the defendants resided. If the Danbury publications were properly admitted as to the Danbury defendants, their admission does not constitute error as to the Norwalk defendants as contended (*p.* 185, Defts.' Brief). The newspaper of each community was only introduced to charge the defendants in that community and the Court at no time refused to instruct the jury that they had no bearing on the defendants in the other communities, so that no error can be claimed on this point. Neither can the evidence be proven erroneous because there was some one defendant who could not or did not read (Defts.' brief, 183-4). *The assignment of error is not for failure to limit the evidence, but in admitting it.* The evidence was properly admitted and there was no request made to restrict its application. To prove error, therefore, the defendants must show that it was not admissible for any purpose.

These newspaper extracts were not offered in evidence to prove knowledge on the part of the defendants of some specific fact, but knowledge of a prevailing condition and repeated operations of a public character which extended over a num-

ber of years and were published in these daily papers from year to year. As we understand the law, even evidence of general reputation may be introduced to prove knowledge on the part of the accused under such circumstances.

Adams v. *State*, 25 Ohio St., 584.

Neither was it claimed, as in the cases cited by defendants, that this item of evidence was conclusive proof that defendants had knowledge of any particular fact, but local publicity is claimed as one of the relevant circumstances bearing upon the defendants' professed ignorance of continuous and prevailing conditions and upon the question whether they knew of the wrongful system. The situation is quite different from offering a newspaper extract to prove a single isolated fact.

In the case at bar it was further established on cross-examination and by stipulation as to 115 defendants (fol. 6784), that most of the defendants were in the habit of reading one of the newspapers from which these extracts were taken and under such circumstances the admissibility of evidence of this kind is clearly established by defendants' own cases and numerous others.

Am. Fire Ins. Co. v. *Landfare*, 56 Neb., 482;
2 *Taylor on Evidence*, Secs. 1665-6;
Leeson v. *Holt*, 1 Stark, 186 (1816);
Wigmore on Evidence, Secs. 251-55.

It was certainly proper on cross-examination to read these various extracts to the defendants who denied that they had ever known of boycotting and ask them whether they read the particular

newspapers in question during that year and whether they read the particular extracts which were offered in evidence. This was done repeatedly on cross-examination and the newspaper extracts were all properly placed before the jury in that way on cross-examination, so that if their admission in evidence on the plaintiffs' direct case was erroneous, that error became harmless because the same evidence was properly introduced and placed before the jury on cross-examination before the trial was closed. The law is well settled to the effect that an error made in the admission of evidence is cured if the evidence is made admissible during the subsequent conduct of the trial.

If, as defendants contend, none of these newspaper extracts contained any reference to any unlawful acts, then they were surely not harmed by their admission. The defendants' statements that the newspaper items as to unionizing Connett and fining a purchaser of a non-union hat (Defts.' Brief, pp. 191-3) were not supported by outside proof is erroneous. Both facts are supported by other evidence (fols. 1404; 2139; 1568; 141-2).

POINT X.

The Court properly refused to suppress the depositions of Lynch, Ford and Riley and committed no error in admitting in evidence the answers of these deponents in which they refused to answer on the ground of self-incrimination.

Our head note covers assignments of error 50-52 inclusive (p. 221, Defts.' Brief). If the court had

erred it would be harmless. The most that defendants could be prejudiced would be by the implication that the conspiracy were being carried on in Philadelphia and Boston and this is thoroughly established by other evidence (our Brief, pp.). But the court did not err. It ruled that the jury should have the benefit of the witnesses' answers and of the entire circumstances in the same way as if the deponents were present in court (fols. 1963-64). Each of these deponents were officers of local unions of the United Hatters in the cities of Boston or Philadelphia where boycotting operations were actively conducted against plaintiffs' customers. Their depositions were taken on behalf of the plaintiffs, at which time the minute books of the hatters' organizations were produced by the deponents but not examined because of the refusal of the deponent to permit it. The defendants' counsel were present and the witnesses were also represented by counsel who instructed them in many cases not to answer the questions propounded on the ground that it would tend to incriminate them. At the time of taking these depositions the defendants' counsel disclaimed any responsibility for the witnesses' declinations. From the official position of these witnesses and the fact that the boycotting was being actively conducted by their organization in that city, and because of the further fact of their refusals to testify on the ground that it would tend to incriminate, it appears that the witnesses were leading members of the defendant combination although they were not nominal defendants in the case. The refusal of a party when testifying, to answer a material question on the ground that it

would tend to incriminate him is competent evidence against him.

Andrews v. *Frye*, 104 Mass., 234.

The depositions and all their contents were admitted in evidence on the former trial without objection. It is under such circumstances that defendants made their motion to suppress the depositions and later to exclude the answers where the deponents claim protection against self-incrimination.

The motion to suppress is clearly not allowable because it must be made prior to the trial.

Century Digest "Depositions" Vol. 16, Par. 223 (numerous cases cited).
Samuel v. *Hostetter*, 118 Fed., 257.
Holladay's Case, 27 Fed., 830.

"The failure of a party to note objections to depositions of the kind in question when they are taken or to present them by a motion to suppress or by some other notice before trial is begun will be held to be a waiver of the objections."

Howard v. *Stillwell*, 139 U. S., 199.

Especially is this true where there has been a former trial as in the case at bar and no such objection was raised to the admissibility of the depositions at that time.

Spear v. *Coon*, 32 Conn., 292.
Wendell v. *Abbott*, 45 N. H., 349.

Furthermore, some of the testimony in these

depositions was clearly admissible, and if a part is good, it is error to exclude the whole.

Commercial Bank v. ***Union Bank,*** 11 N. Y., 203;
First National Bank vs. *Rush,* 85 Fed., 539.

We think in view of all of the circumstances it was also proper to submit to the jury the refusal of these union officials to answer questions on the ground that it would tend to incriminate them. All of this evidence, including these refusals, was presented to the Court on the original trial without objection and the plaintiffs had a right to rely upon the assumption that the same course would be followed in the second trial. If the defendants had any objections to the reading of this evidence from these depositions, they should have made some motion to suppress them before the second trial in order that the plaintiffs might have had the opportunity to take new depositions in the event that portions of these were excluded. Moreover, the objections of the defendants were vague and general without stating any grounds upon which they were based, and such objections are not entitled to consideration.

Tuskaloosa Cottonseed Oil Co. v *Perry,* 85 Ala., 158;
Valton v. *National Fund Assurance Co.,* 20 N. Y., 32.

We further contend that this question was entirely within the discretion of the trial Court and not open to review.

Galveston R. R. Co. v. ***Baumgarten,*** 72 S. W., 78;
Cullum v. *Smith,* 6 Ala., 625.

POINT XI.

Assignment of Error 58.

After the union men struck, Mr. Loewe addressed the remaining non-union men for the purpose of inducing them to remain at work. The defendants object to this testimony and make it the basis of assignment of error 58. Defendants state that the plaintiffs could prove that they did try to induce the non-union men to remain (fol. 4052), but they could not prove what they said to them for the purpose of inducing them to remain. The Court allowed the proof of what the plaintiffs said to the non-union men, because it related to the efforts of the plaintiffs to minimize and avert damages by endeavoring to prevent the balance of their men from striking (fols. 4049-57). Such evidence was clearly admissible under the Court's ruling (fol. 4054).

POINT XII.

Letters written by the plaintiffs to the officers of the United Hatters at their request and as a part of the preliminary negotiations concerning the possible unionization of the plaintiff's factory were admissible.

Our head note covers assignments of error 57 and 60 (p. 220, Defts.' Brief). It is established in the record that James P. Maher, Treasurer of the United Hatters and President of a Danbury local union, entered into negotiations with D. E. Loewe

& Co. under the approval and instructions of the general executive board of the United Hatters with a view to unionizing the Loewe factory. The first meeting took place about November 11, 1900 (fols. 3907-8), at which time Mr. Maher stated that he was obliged to be away for a long while and Mr. Loewe promised to write him his decision as to whether he would meet the national officers of the union concerning this matter (fol. 3915), and Mr. Maher replied, "Very well, then" (fol. 3919). This letter was written and asks Mr. Maher to furnish further information concerning the effects of unionizing in order that plaintiffs might give his proposition further consideration (fols. 3921-24). Mr. Loewe received no answer to this letter, but in March, 1901, accepted an invitation to meet the officers of the United Hatters when Mr. Maher was also present again (fols. 3926-28). At the close of the meeting when the national officers told Mr. Loewe that they would use force if he did not come in peacefully, Mr. Moffitt, the presiding officer, said:

"Now think it over and communicate—You can communicate with Mr. Maher" (fol. 3943). Subsequently Mr. Loewe wrote his reply as promised (fols. 3976-77). In this letter, which was received by Mr. Maher, Mr. Loewe declines to unionize his factory and gives his reasons therefor (fols. 3983-94). It is the admission of this letter which is embodied in part in the complaint that constitutes the basis of assignment of error No. 60.

We submit that these letters, written at the request of the defendants and forming a part of the negotiations inaugurated by the defendants to unionize the plaintiffs' factory and being written in the ordinary course of these negotiations,

are as clearly admissible as a part of the *res gestae* and the history of the transaction as the conversations between the plaintiffs and these national officers.

POINT XIII.

Fifty-ninth Assignment of Error.

One Gildea who struck with the other union men in the plaintiffs' factory explained to the plaintiffs why he was obliged to quit work, and in the course of his explanation told of the address which had been delivered to the strikers at the union headquarters which was the cause of his quitting work (fols. 4043-46). The defendants contended that the said Gildea was not coerced to quit work, but willingly entered into the combination on his own inititative (fols. 4033-42). The Court charged the jury specifically concerning this piece of evidence and said:

> "Reference has been made to Mr. Loewe's testimony as to what one Gildea stated to him. If you find Mr. Gildea was at the time engaged as one of the conspirators his sayings are admissible and should be given due weight; otherwise they are not admissible and should not be considered; and this principle of law applies to the sayings of all the alleged conspirators" (fols. 1680-81).

In view of the general proof of the circumstances surrounding the strike and of the fact that this testimony, even if hearsay, was borne out by the actual facts otherwise proven it would seem to be harmless. The care of the trial Court, however, to instruct the jury, made the testimony clearly unobjectionable.

POINT XIV.

Extracts from the daily papers in Richmond, Va., and on the Pacific Coast, referring to the boycott, were admissible in evidence as showing the general publicity given to the boycott for the purpose of intimidating the plaintiffs' customers.

There are no assignments of error relating to our head note, but the defendants in their brief request the Court in its discretion to deal with this question and declare that such evidence was not admissible. The complaint expressly alleges that the defendants "used the daily press to advertise and announce said boycott and the measures taken in pursuance thereof by said labor organizations, particularly the San Francisco Bulletin in its issues of July 2nd and July 4th, 1903, and a daily paper published in Richmond, Va., on December 10th, 1902."

In regard to the extracts from the San Francisco Bulletin of July 2nd and July 4th, 1903, the record shows that these news items were prepared by the labor editor in the ordinary course of business "who gathers all the information from the unions" (fols. 2549-51); that on July 3rd, the day after the Bulletin announced that Mr. Hennelly and defendant Kelly have arrived, these two men called on Triest & Co. (fol. 2353), which was the final interview which Triest & Co. had with them (fol. 2350), and that evening defendant Kelly and Hennelly appeared before the San Francisco Labor Council which, at their instigation, declared

a boycott against Triest & Co. (fols. 2533-34). The following day this item of news was printed in the San Francisco Bulletin of July 4th which in substance recites what was done at the Labor Council the night before (fols. 2355-56), and Martin Triest read this item on the same evening (fol. 2352). The circulars which were issued by the San Francisco Labor Council against Triest & Co. and D. E. Loewe & Co., and signed by Hennelly and defendant Kelly and the San Francisco Labor Council were dated July 3, 1903 (fol. 2363). It further appears that it was the practice to send the minutes of the meetings of these organizations in San Francisco to various daily papers for publication (fol. 2430), and through the associated press they naturally reach other papers. Under such circumstances, and in the absence of any denials by defendant Kelly and of any evidence to the contrary, an ordinary man would draw the conclusion that this publication was directly caused by defendant Kelly or other conspirators and it was proper to leave this question to the jury.

The Astoria paper from which the extract was taken was dated September 5th, 1903 (fol. 3678), which is the same date on which Mr. Hennelly called on Nathan Schlussel (fol. 3671) in Astoria. Mr. Schlussel read this account in the Astoria paper and sent it on to Triest & Co. (fols. 3675-77) and it appears that the paper is a daily paper published in Astoria for many years past (fol. 3678). The fact that the date of the extract in this paper corresponds with the date of Hennelly's visit, and the fact that the recitals in the news item so accurately conform to everything that was done and said by Mr. Hennelly during

this visit and the action that had been taken by the unions against D. E. Loewe & Co. and Triest & Co. (fols. 3682-84) were circumstances of such a character as to justify the jury in drawing the inference that he was the cause of the publication of this item of news. In all of these newspaper publications, we find the news items closely connected by date and other circumstances with the established acts of the defendants.

In a boycott of this character, which was so widely extended and promulgated and where one of the avowed objects of the defendants was to bring it to the attention of the plaintiffs' customers for the purpose of intimidating them, the publications of accounts of the boycott, while not evidence of the boycott itself, are the natural and intended results of the defendants' acts, and where, as in the case at bar, such published accounts simply relate to what has already been proved by competent evidence, the publications are themselves admissible. In California, the minutes of the State Federation of Labor, which contained accounts of the boycott against the plaintiffs, were sent to such papers as the "Labor Clarion," "Examiner," "Chronicle" and "Call" (fol. 2430), and it is inevitable, under our present system of associated press despatches, that such accounts, when placed with certain papers for publication, should immediately be republished in other papers in the same neighborhood. The defendants, moreover, directed their circulars "To Whom it May Concern" (fols. 2372; 2364; 3452). "To the trade unionists and Public of California" (fol. 2395), and instructed the secretary "to inform the retail hat dealers *throughout the State* not to expect the patronage of union men and wom-

en while they patronize the houses therein declared unfair by organized labor" (fol. 2398), and the American Federation of Labor calls upon all *labor and reform press* to please copy their boycott notices. Under such circumstances, the publication of this matter in the daily press is the inevitable and intended consequence of the defendants' acts, and made the extracts from the California and Astoria papers admissible. These papers could not have published such accurate accounts if they had not been informed by conspirators, and the agents were accustomed to have these matters published by newspapers and sent to union headquarters (fols. 2031; 2021-25; 1605-7; 1610-15; 2042; 2139; 2145).

The subject matter which was published in the "Richmond News" of December 10th, 1902, was given the reporter of that newspaper by the defendants' own agents (fols. 2044-45), and they requested him "to note the statements that they would make publicly on the floor" (fol. 2042), and later reported in the journal of the United Hatters stating:

> "There is no labor paper here and we have to rely on the 'Richmond Daily News' for the notices we get in regards to our work here. This paper has a labor column in every day and has given our work in this city favorable recognition" (fol. 2031).

The reporter who supplied this extract in this newspaper further testified that all of the statements therein made were based upon the statements which he heard the defendants' agents make (fol. 2045).

These newspaper extracts except in the case of

the "Richmond News," are not relied upon as proof of the facts, because the facts were elsewhere proved by competent evidence, but are relied upon as proof of the publicity which was the natural and intended consequence of the defendants' operations for the purpose of bringing the boycott to the attention of the plaintiffs' customers. The defendants' arguments and authorities are therefore not in point (Defts.' Brief, p. 217).

In a case of such ramifications and extensive proof as the case at bar, it would be difficult to find a prejudicial error in the admission of hearsay evidence, as substantially every fact connected with the conspiracy is proven many times over by competent evidence, in one form or another. The facts referred to in each newspaper extract were established by independent evidence.

Many of the defendants' assignments of error are not urged in their brief and are therefore not dealt with in the plaintiffs' brief.

We submit that the judgment should be affirmed.

Respectfully submitted,

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